No. 91-1100

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

ROBERTA ANN FUNNELL, *Petitioner*,

v.

ROBERT MARTIN, *Respondent*.

PETITION AND APPENDIX A FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OKLAHOMA, DIVISION I

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Pro se

December, 1991

QUESTIONS PRESENTED

A plain reading of 41 USC § 1988 and Congressional Reports indicate that federal district courts are to be guided by existing federal decisions on allowing discretionary attorney fee awards to prevailing parties and that there is a double standard of stringency for prevailing defendants. There is no mention of any applicability of § 1988 to the states.

1. Are state courts to be guided by federal district court opinions and rules in deciding prevailing defendant attorney fee awards in civil rights actions?

2. What is the standard for review of the discretionary award of attorney fees to prevailing defendants in civil rights actions?

3. Whether state judges whose disqualifications are sought should maintain jurisdiction to hear substantive motions in cases brought under the Civil Rights Act?.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1991

ROBERTA ANN FUNNELL, Petitioner.

v.

ROBERT MARTIN, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OKLAHOMA, DIVISION I

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Roberta Ann Funnell, respectfully prays that a writ of certiorari issue to review the memorandum opinion of the Court of Appeals of the State of Oklahoma, Division 1, entered in the above-entitled proceeding on March 26, 1991.

OPINIONS BELOW

The memorandum opinion of the Court of Appeals of the State of Oklahoma, Division 1, is unpublished and is printed in Appendix A hereto, ***infra,*** p. 1a.

The Order and Journal Entry of Judgment of December 19, 1988 in the District Court of Oklahoma County, State of Oklahoma, along with that court's own lack of findings of fact and law, are respectively printed in Appendix A hereto, ***infra***, p. 8a and pp. 21-22a, (Transcript) T-42, L3-6.

JURISDICTION

The memorandum opinion of the Oklahoma Appeals Court (Appendix A, ***infra,*** p. 1a) was entered on March 26. 1991. A timely petition for rehearing was denied on May 30, 1991 (Appendix A, ***infra,*** p. 5a). A timely petition for writ of certiorari from the Supreme Court of Oklahoma was denied on July 26, 1991 (Appen-

dix A, *infra*, p. 4a). On October 16, 1991 and November 21, 1991, Justice White ordered that the time for filing this petition for writ of certiorari be extended to and including November 25, 1991 and December 23, 1991, respectively. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

UNITED STATES CONSTITUTIONAL PROVISIONS

United States provisions are printed herein, state materials and local federal court rule are printed in Appendix A, hereto, ***infra, p. 46a.***

ARTICLE VI

Clause 2. This Constitution, and the laws of the United State which shall be made in Pursuance thereof; *** shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT I

Congress shall make no law *** abridging *** the right of the people *** to petition the Government for a redress of grievances.

AMENDMENT V

No person shall *** be deprived of life, liberty, or property, without due process of law; ***

AMENDMENT XIV

Section 1. *** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES STATUTES

42 USC § 1983. **Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to a statute of the District of Columbia. (R.S. §1979; Dec. 29, 1979, P.L. 96-170, § 1, 93 Stat. 1284.)

42 USC §1985. **Conspiracy to interfere with civil rights**

* * * (2) * * * or if two or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, of persons, or class of persons, to equal protection of the laws; (3) * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 USC §1988. **Proceedings in vindication of civil rights; attorney's fees**

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights,and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law,the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature,

in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980 and 1981 of the Revised Statues [42 USCS § 1981-1983, 1985, 1986], Title IX of Public Law 92-318 [20 USCS §§ 1681 et seq.], or Title VI of Civil Rights Act of 1964 [42 USCS §§2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.
(R. S. § 722, Oct. 19, 1976, P.L. 94-559, §2, 90 Stat. 2641; Oct. 21, 1980, P. L. 96-481, Title II, §205(c), 94 Stat. 2330.)

Appendix A hereto, ***infra,*** pp. 46a-53a set forth the text of the: Oklahoma Constitution, Bill of Rights Art. 2 §6 (Courts of Justice open) and §7 (Due Process of Law); Oklahoma Statutes, 12 O.S. §29 (Clerks to File and Preserve Papers), 12 O.S. §31.1 (Removal of Records or Files From Office of Court Clerk), 12 O.S. 2006 (Time Computation), 20 O.S. §126 (Trial Court Administrators-Duties-Appointment), 20 O.S. §1401 (Disqualification of Trial Judge), 20 O.S. §1402 (Disqualification of Appellate Judges), 20 O.S. §1403 (Disqualification of Judge, Claim Of - Mandamus); Rule 6(E), Local Court Rules of the United States District Court for the Western District of Oklahoma(Time of Application for Attorney's Fees; Oklahoma Rules on Administration of Courts, Rule 9, (Disqualification of Judge-Assignment of Successor-Transfer of Causes; Rules for the District Courts of Oklahoma. Rule 15, (Disqualification of Judges in Civil and Criminal Cases), District Court Rules for Oklahoma-Canadian Counties, Seventh Judicial District, Rule No. 52, (Court Files).

STATEMENT OF THE CASE

The Oklahoma Appeals Court affirmed the trial court, which awarded attorney fees to respondent as the prevailing defendant, and constructed 42 USC §1983 stating (Appendix A, infra, p. 3a):

> §1983 clearly provides for attorney fees to the prevailing party at the discretion of the judge.

The appeals court cited state law as to abuse of discretion. 42 USC §1983 and §1988 are printed supra, pp. 2a, 3a. With reference to the

Rules for the District Courts of Oklahoma, the appeals Court stated (pp. 2a,3a):

> [I]nasmuch as Oklahoma statutes governing disqualification of judges have been approved as not violative of Art.II,§6 of the Oklahoma Constitution prohibiting denial of access to the courts, we find Rule 15 to be a valid exercise of our Supreme Court's rule making powers to implement the disqualification provisions of Title 20. See 20 O.S. 1981 §§1401 et seq.

20 O.S. §§1401 - 1403 and Rule 15 are printed in Appendix A hereto, infra pp. 48a, 49a and pp. 51a, 52a, respectively. Rule 15 requires a four stage procedure with a required re-representation to another judge before a mandamus application. 20 O.S. §1403 allows "reasonable notice" and if the judge fails to certify his disqualification within three days before the matter is set for trial, an application for mandamus may be made. The Oklahoma Supreme Court has adopted a federal rule that participation waives any disqualification. See Appendix A, infra pp. 45a, 46a Rehearing denied 44a.

Petitioner raised the un-constitutionality of the disqualification procedure particularly vigorously when on December 19, 1988, assigned Judge Glenn Dale Carter proceeded to hear the respondent's motion for attorney fees despite having just denied petitioner's motion for disqualification based on open demonstrations of bias and prejudice committed on October 14, 1987.

Under Rule 15 petitioner was entitled to a rehearing, before a second judge. She had pending a prior request under Rule 15B for rehearing her first motion for disqualification, Appendix C., pp. 21c, 36c, denied by Judge Carter on August 4, 1988, before proceeding with hearing dispositive motions (Appendix A, pp. 28a, 29a Transcript, T 17 L 6 - T18 L25, pp. 32a, 33a. Petitioner had not waived that right in Oklahoma Supreme Court case 71,726 noted by the Appeals Court. 71,726 had been brought to set aside the judgments of August 4, 1988, Appendix C, p. 67c including the judgment favoring respondent which was the basis for attorney fees. APPLICATIONS TO STAY PROCEEDINGS AND FOR REHEARING WERE STILL PENDING IN 71,726 AND NOT DENIED until May 31, 1989, Appendix C, pp. 56c, 60c, Appendix A, p. 5a, respectively.

See supplement, Appendix C, p. 18c requesting Judge Rakestraw, an alleged co-conspirator and Presiding Administrative judge to disqualify and comply with Rule 9 of Administration Rules. Note her disregard and delays, Appendix B, p. 56b.

Judge Carter first claimed he had not seen the motion, then that it was not "ripe" for hearing although it had been served within the time Rule 15 requires, Appendix C, p. 13c and Appendix A, pp. 16a-17a. Transcript, T3 L12-T4 L3.

Over petitioner's strenuous objections that she could not participate under the federal rule, but had filed objections, Judge Carter made a deal with respondent's counsel to allow hearing petitioner's motion if the attorney fee motion could be heard.

The fee motion was filed on November 17, 1988, Record 739-41, after the Journal Entry of the August 4, 1988 judgment was filed on October 14, 1988. Appendix A, pp. 27a-29a. The respondent, the trial court administrator of the Seventh Judicial District, claimed absolute immunity and that petitioner's suit was frivolous. The trial court made no findings of fact or law on August 4, 1988 nor on December 19, 1988, Appendix A, p. 38a, Transcript , T39 L2-3, p. 28a, pp. 21a-22a, Transcript, T42 l3-6, p. 8a.

The Journal Entry prepared by Respondent's counsel injected his own arguments as being the findings of the court. Petitioner refused to sign and filed objections. On January 26, 1989, the trial court held that the Journal Entry should be entered as the record, see Appendix A, p. 12a. The appeal rose therefrom.

Petitioner's Petition of Error filed January 18, 1989, and amendments thereto set out federal and constitutional assignments of error, see Appendix B, p. 59b, e.g. Number three (3) states error in holding that [petitioner's] action was without basis in law or fact and was frivolous when the issue of liability of a court administrator, who by law can do only non-judicial acts, is a matter of first impression in this state and federal circuit and not directly ruled on by other jurisdictions. See law, Appendix A, p. 47a.

Number nine (9) states the failure to adhere to state and federal rulings on motions for attorney fees and appellant's constitutional right to due process.

Number eleven (11) states the disregard of civil and constitutional rights to have her disqualification motion heard by a second judge before proceeding to hear the application for attorney fees when argument on the merits could not be presented without waiver of the disqualification.

Number fourteen (14) states the denial of the process, to a fair and full hearing, and an unbiased judge, and gross abuse of discretion.

Numbers fifteen (15), sixteen (16) and seventeen (17) state failure to acknowledge bias in favor of the appellee and appellee's counsel who is also counsel for the trial and appeals courts, error in awarding the untimely application for attorney fees, and that the state's judicial process and rules of practice do not provide fair procedures as to judicial disqualification and are unconstitutional denying access to the courts.

Petitioner's Motion and Supplement to Stay Execution of Judgment in appeal 72,451, set forth and attached numerous exhibits demonstrating the prejudice due to Rule 15 procedures. The Supreme Court denied a stay of execution, see Appendix A, p. 7a.

THE REQUESTS FOR REHEARING THE DENIED DISQUALIFICATION WERE NOT SET UNTIL JULY, 1989, **AFTER THE SUPREME COURT HAD DENIED A REHEARING OF** 71,726, and Stay of Proceedings, Appendix A, p. 6a. Thus the assigned judge denied the motions. A motion to stay execution filed January 4, 1989, was denied by the Trial Court although constitutional denial was alleged, Appendix C, p. 1c-2c, Appendix A, p. 13a.

The Appeals Court's opinion cited ***supra*** failed to correctly cite and construct the federal law 42 USC §1988, allowing attorney fees in 42 USC §1983 cases. That court failed and refused to correct on a timely Petition for Rehearing which emphasized the lack of due process. fair trial and access to the courts, making unconstitutional decisions, disregarding federal supremacy in 42 USC §1983 et seq. cases, and disparity of cited state law. Appendix B. p. 24b, Order, Appendix A, p. 5a.

The Oklahoma Supreme Court denied certiorari in which the petition set forth the failure to apply controlling federal law and supremacy, the disparity of state laws and rules and the aforesaid Constitutional denials. Appendix B, p. 16b, Order, Appendix A, p. 4a. Both courts disregarded petitioner's assertions as to failure to apply the controlling federal law acknowledged under the ***supremacy*** clause in the Oklahoma Supreme Court's own ruling in a case decided after this appeal was briefed, See Appendix B, pp. 20b-21b and p. 28b. The Courts disregarded the legislative intent of Congress briefed and attached to the Petition.

The Appeals Court's finding that Rule 15 was a valid exercise of rule-making power disregarded the plain reading of same and their cited 20 O.S. §§1401, et seq. The cases that the Appeals Court cited are in disparity as set out ***infra***. Case 71,726 is further discussed hereafter.

After denial of Certiorari by the Oklahoma Supreme Court, petitioner obtained Court documents that give the appearance that the then-Chief Justice and Vice-Chief Justice interfered in a grand jury investigation of Judge Carter as they controlled the assignments of court reporters and limited the time. The attorney calling the grand jury averred that twelve female witnesses against Judge Carter were not called, See Appendix B, p. 9b, 13b, 14b, and 15b. Respondent's counsel, the office of attorney general, was ordered to advise the grand jury. Appendix B, p. 11b.

Petitioner requested a recall and stay of the mandate, praying for setting aside the five person denial of certiorari based on disqualification of participants, and attaching her affidavit with ***supra documents. Appendix B, p. 1b-16b. Justice Doolin had assigned Judge Carter in December 1987 while the grand jury was only recessed and not adjourned. Petitioner did not learn of the grand jury until 1990.***

Petitioner had sought to disqualify Justice Doolin in 71,726 as the Carter appointment had been secreted and notice not mailed until April 5, 1988, Appendix A, pp. 41a-42a.

HOW FEDERAL QUESTIONS AROSE

Invoking 42 USC §1983 and §1985, in 1987 the petitioner brought two causes of action in state court, Oklahoma County District Court case No. CJ-87-5512, against respondent and other parties alleging that all defendants had sought to obstruct and/or delay justice and to deprive rights secured by the Constitution and laws of the United States and the State of Oklahoma, acting under the color of state law and court rules with state judges to deprive property, property rights, due process and a fair trial, to prolong litigation and deplete assets of an estate and trusts. Denial of access to the courts, conspiracy, unconstitutional post-deprivation relief, discrimination against a *pro se* litigant, deceit, threat and intimidation were alleged. See Petition, Appendix C hereto, p. 89 et seq.

The root of the action related to the refusal by various judges and attorneys to allow or respond to discovery or to submit documents for professional examination for forgeries. It was averred that in 1975 petitioner had learned that her own name had been forged to a Quit Claim Deed for property that should have been in the estate but had been sold by an estate attorney.

In 1985 similar allegations had been filed against the same defendants other than respondent in the United States District

Court, Western District of Oklahoma but were dismissed due to improper and/or hostile acts of the clerks and the court, Petition ¶I. The 1987 state suit did not include all of the federal suit defendants but added respondent for his admitted acts of removing and/or secreting court records, Appendix C, p. 86c, for participating in a conspiracy to defeat petitioner's claims against attorneys, against executors and trustees in CJ-71-2464 and the estate probate, P-71-232, and to obtain large fee awards to their attorneys who also represented petitioner's former attorney, Stephen Jones. One file respondent removed pertained to petitioner's suit against Jones, CJ-79-991, and numerous documents became "missing," appealed as No. 59,204.

Petitioner's affidavit in opposition to respondent's motion for summary judgment Appendix C, p. 81c-85c, avers at 84a and 85c that respondent had claimed the court clerk was responsible. After suing the latter in the 1985 federal suit, petitioner learned respondent was culpable. See laws and 1986 changes due to practices of removing court files, Appendix A, p47a.

Petitioner alleged that in 1983 she learned that Jones was in conspiracy with the estate executor's attorneys to defeat her claims and that in 1985 documents were altered when CJ-71-2464 file was removed to their offices, Appendix C, pp. 97c-98c.

Petitioner alleged in CJ-87-5512 that after her attempt to obtain suspected forged documents in CJ-71-2464 was thwarted and the case unlawfully dismissed in June 1984, she was denied mandamus/prohibition and timely setting thereof, and required to appeal. See Appendix C, 95c, ¶¶XIX, XX.

She was denied consolidation with appeal 59,204, see Appendix, C, p. 55c, 56c, and the Supreme Court delayed calling up the record on appeals of CJ-71-2464, until the day after denying a rehearing, on file for 17 months, of the Jones appeal, and after Justice Doolin opiner in 59,204 ABSOLVING Jones, et al, became the Chief Justice. Petitioner sought and was denied a writ of mandamus from this Court as to the Jones case, United States Law Week case 87-192.

Meanwhile CJ-87-5512 was filed due to state statute limitations. The assigned Oklahoma County judge transferred the case to the Chief Judge, Appendix A, p. 44a on the basis all 7th Judicial District judges were disqualified. At respondent's behest, instead of requesting the Supreme Court to appoint a judge as required by Rule 9(F) Appendix A, pp. 50a, 51a, Judge Joe Cannon attempted

to keep the case before district judges who were respondent's employers See Appendix A, pp. 44a, 43a, creating a flurry of pleadings and hearings, which respondent misrepresented to and misapprehended by the Appeals Court, Appendix A, pp. 1a, 2a.

After a letter to Chief Justice John Doolin from Judge Cannon still attempting to keep the case before 7th Judicial District Judges, Record 140-141, Justice Doolin, just prior to ending his term, appointed Judge Glenn Dale Carter without any notice to petitioner or the Court Clerk. See 1988 docket records indicating the trial judge as Judge Cannon, Appendix C, p. 50c.

For the second time after filing §1983 cases, petitioner's car was rammed and deleterious and deteriorating injuries were received, Appendix C, pp. 45c-49c. Petitioner made inquiries regarding any judicial assignment but did not receive notice of the secreted assignment until after receiving a notice of a hearing on April 19, 1988 before Judge Carter and after she had notified Judge Carter's office she could not appear due to injuries, Appendix C, p. 44-45c. By 'phone his bailiff assured petitioner that the judge would reset the hearing, but a hearing was held ***ex parte***, scheduling dispositive motions. A Journal Entry for that hearing was filed on January 26, 1989, over nine months later. See Appendix A, p. 39a-40a.

Believing Justice Doolin to be biased and prejudiced against her, thus disqualified to make a judicial assignment and in view of the federal rule on substantial participation waiving disqualification, Petitioner could not file a motion for continuance. See Appendix C, p. 30c. On May 5, 1988, after belatedly receiving a proposed Journal Entry, Petitioner filed objections, Record 177-191, delivering copies to Judge Carter and Justice Doolin with a vigorous objection to the judicial assignment and concealment of same, and to the ***ex parte*** hearing, requesting the disqualification of the Chief and Vice Chief Justices. No response issued. On June 16, 1988, a letter as an ***in camera*** request for disqualification required under Rule 15 was sent to Judge Carter, and copies to all counsel. Appendix C, pp. 52c-54c.

A flurry of non-served and served pleadings and discovery requests not properly served were then filed, requiring petitioner's objections or request for extensions of time. Record 164-193, 196-223, 226-533.

Receiving no direct response from Judge Carter nor counsel, as to the disqualification request, Petitioner timely filed her motion for certification of Disqualification, and for change of venue due to

problems with the court file and concealment of respondent's belated response to discovery. Appendix C, p. 36c-56c.

The denial of the motion is set forth ***supra,*** last mid-paragraph, p. 5, as is the proceeding to hear dispositive motions, along with the Rule 15 required rehearing request before a second judge. Petitioner vigorously objected to the denial of her right to due process due to the federal participation rule adopted by the state. Respondent objected to the rehearing request claiming it was untimely filed contrary to fact and law printed at Appendix A, 47a. See respondent's response, Appendix C, p. 80c.

Judge Rakestraw, an alleged co-conspirator had become the administrative presiding judge, unknown to petitioner, and set another hearing before Judge Carter. Taking that as a denial of the request for a rehearing before a second judge, petitioner filed an application for ORIGINAL JURISDICTION and Petition for Mandamus/Prohibition, Appendix C, p. 67c et seq., the Supreme Court No. 71,726 referred to in the memorandum Opinion.

The said Petition demonstrated the bias and prejudice against this pro se litigant, the inconsistences of its Order in Number 54,217, 20 O.S. §1403, Rule 15 and Rule 9 of Rules on Administration of Courts, Appendix A, p. 50a, and that the said judges had disregarded the said rules, denying federal and state constitutional rights. By amendment, Appendix C, p. 78c, petitioner requested to void the acts of Judge Carter. After vigorous objections by all defendants, on October 12, 1988, the Oklahoma Supreme Court assumed original jurisdiction to deny the request for disqualification of Justice Doolin and denied the writs and a stay of proceedings, Appendix A, p. 5a.

On October 13, 1988, petitioner hand-delivered to Judges Carter and Rakestraw a supplement to the request for rehearing the disqualification, set forth ***supra,*** p. 5

On October 14, 1988, Judge Carter demanded that petitioner represent her disqualification motion to him over her objection. A courtroom observer noticed the judge wink in the direction of a lawyer/defendant and former associate. After the hearing the judge and respondent's counsel were observed and overheard exchanging profuse expressions of gratitude. Affidavits were made and filed with a Petition for Rehearing the application for Writs of Prohibition/Mandamus on Nov. 21, 1988, Appendix C, p. 60c, reiterating the denial of constitutional rights of a fair trial and due process under state and federal constitutions due to Rule 15 procedure and

adoption of the federal rule on waiver. Petitioner notified the Supreme Court of the respondent's application for attorney fees and the misconduct of counsel. She also filed a Stay of trial court proceedings, Appendix C, p. 56c. The rehearing and stay were not denied until May 31, 1989, Appendix A, p. 5a.

On November 25, 1988, petitioner received notice that Judge Rakestraaw and Judge Carter set a hearing for December 19, 1988. The same day a letter was hand-delivered to Judge Carter requesting his disqualification in light of the new expressions of bias and prejudice. On December 9, 1988, filed a disqualification motion, Appendix C, p. 13c, and the circumstance of the denial are set forth *supra*, pages 5 and 6.

A timely request to re-present her motion for Disqualification was filed December 27, 1988. To reiterate the request for rehearing were not set for hearing until July, 1989, see Appendix A, p. 11a, after all dispositive motions of defendants had been granted. The bias and prejudice against this pro se petitioner are demonstrated throughout Appendices B and C along with an anti-member-of-the-public animus.

REASONS FOR GRANTING THE WRIT

I.

The Oklahoma Appeals Court's misconstruction of 42 USC §1983 or, in the alternative, §1988, (a) eviscerates the intent of Congress as to fee awards to prevailing defendants, and (b) conflicts with decisions of this Court, and other circuits.

The House of Representatives Report, No. 94-1558 at pages 6 and 7 and Senate Report Number 1011, reprinted in [1976] U.S. Code Congressional and Administrative News, 5912 clearly provide that defendant fee awards are made only if the action is "vexatious and frivolous" or instituted solely to "harass or embarrass." The Senate inserted "clearly" before the above limitations and stated the bill authorized fees if litigation was in bad faith. Copies of these reports were provided to the Appeals Court and referred to in the Petition for Certiorari. Said reports are reprinted in Appendix B hereto at 36b.

In ***Christiansburg Garment Co. v. EEOC,*** 434 U.S. 412 (1978), this Court semantically modified this standard by holding that courts should award attorney fees to prevailing defendants "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." The rule is now well settled but interpreted conflictingly. In 1980 the Chief Judge for the United States District Court of Western Oklahoma, citing ***Christiansburg*** in denying prevailing defendants attorney fees, expressed concern for the "chilling effect" on civil rights plaintiffs, ***Barriner v. Stedman,*** 504 F. Supp. 52, ***E.E.O.C. v. Chandelle Club,*** 506 F. Supp. 75. However, in ***Prochaska v. Marcoux*** 632 F.2d 848 (1980), the 10th Circuit overruled that trial court's finding that the action was not frivolous, unreasonable, or without foundation on denying the defendant's motion for attorney fees, and zealously granted fees on cross appeal, although ***Prochaska*** raised submissable questions under the civil rights act but lost on the merits.

In ***Hughes v. Rowe,*** 449 U.S. 5 (1980) citing ***Christiansburg*** this Court stated that the fact that a plaintiff may ultimately lose is not sufficient justification for the assessment of fees and an unrepresented litigant should not be punished for failure to recognize deficiencies in his claims. ***Hughes*** reversed an attorney fee award to the Attorney General of Illinois. Petitioner seeks a reversal of an award to respondent who was represented by the Tort and Contract

Division of the office of the Attorney General of Oklahoma. The record is replete with respondent's acts of harassment, misrepresentation of fact and law, "churning" litigation, failure and refusal to serve discovery responses, See e.g. Appendix C, pp. 37c, 40c, 41c, 50c, 51c, 80c-88c; Time Law, Appendix A, p. 47a and hereto, ***infra***, pp. 35a, 36a Transcripts, T. 22-24.

The Circuit Court in ***Munson v. Friske,***754 F.2d 683 (1985), citing ***Christiansburg*** listed relevant factors in determining whether a suit is frivolous, unreasonable or groundless; whether the issue is one of first impression requiring judicial resolution; whether the controversy is sufficiently based on a real threat of injury to the plaintiff; whether the trial court has made a finding that the suit was frivolous under the ***Christiansburg*** guidelines; and whether the record would support such a finding. In making its attorney's fees decision, a trial court must discuss the specific information that forms the basis of the plaintiff's suit and must explain why this information does not constitute adequate factual substance for the commencement of a non-frivolous civil rights case in order to provide a basis for appellate review. Petitioner's action was one of first impression.

II.

The decision below applied state law and the "clearly erroneous" standard for review of discretion conflicting with those circuits using the abuse of discretion standard, and requires supervison for an appropriate standard.

Confusion and conflicting opinions exist as to the appropriate standard of review. Some circuits apply the clearly erroneous standard, e.g., ***Proschaska, supra***. Abuse of discretion is the standard in at least the Second and Fourth circuits. See e. g. ***Wooten v. Clifton Forge School Bd.***, 655 F.2d 552(4th Cir.) and ***Harbulak v. County of Suffolk***, 654 F.2d 194,198 (2nd Cir.). Apparently the Fifth Circuit employs both. Compare ***Coen v. Harrison County School Board,*** 638 F.2d 24,26(5th Cir. 1981) (clearly erroneous) with ***Ellsworth Stereo Theatre, Inc. V. Jackson***, 653 F2 954,955 (5th Cir. 1981) (abuse of discretion).

Because of the importance Congress applied to its meaning of §1988, the words,* * *"the court, in its discretion, may allow the prevailing party... a reasonable attorney's fee as part of the cost", cry out for this Court's supervision of the standard for review of discretion. Those nineteen words have clogged the federal courts

with quarrels over sanctions and fee awards to plaintiffs or defendants resulting in a national paucity of attorneys who will prosecute civil rights cases that are not a "sure thing." Thus expansion of law goes begging and access to the courts is denied to the civil rights litigants Congress sought to aid. The waste of judicial economy and the loss of substantive litigation is incalculable.

Petitioner has been particularly hampered as the defendants were mostly attorneys acting with judges before whom lawyers have to practice. Equal protection of the law is denied without a standard for review of discretion.

III.

The decision below that a court rule is "a valid exercise"of a constitutionally approved statute conflicts with a plain reading of the statute and the case cited as "in accord", raising important and unresolved due process problems.

The Oklahoma Supreme Court denied relief when petitioner on application for original jurisdiction and Mandamus/Prohibition demonstrated the conflict of Rule 15 for the Oklahoma District Courts, 20 O.S. §1403, and that court's adoption of the federal rule on waiver of disqualification by participation, citing ***Andrews, Mosburg, Elam, Legg & Bixler, Inc. v. General Insurance Company of America,*** U.S.W.D. 418 F. Supp. 304. The decision below upheld Rule 15 as being an exercise of a constituionally approved statute, but claimed accord with ***Ex Parte Hudson***, 106 P. 540(Okl.1910), which holds that a judge has no right to pass upon his bias and prejudice, stating at 541:

> "It follows, then, as a matter of course, that a judge who would proceed to trial after the making and filing of such an affidavit would do so without power or authority, and the trial would be a nullity."

Rule 15 does not remove jurisdiction from the court requested to certify disqualification until the matter is resolved by a second judge.

The irony herein is that the assistant attorney general requesting and obtaining attorney fees also had advised the trial court it had jurisdiction to proceed with hearing dispositive motions, See Appendix A, p. 36a, Transcript, T 24 L 5-20, despite petitioner's objection she could not participate without waiver of disqualifica-

tion. What more could a "Catch 22" be? Both substantive and procedural due process were denied petitioner. See ***In re Welfare of Hansen***, 599 P.2d 1304 (Wash. 1974) Essence of due process is right to be heard, ***Painter v. Painter,*** 320 A2d 484 (N.J. 1974) rules must be clear and objective; Concept of due process is premised on fairness and reasonableness in light of total circumstances. ***Ingraham v. Wright, C.A. Fla 1976***, 525 F.2d 909, affirmed 97 S. Ct. 1401, 430 U.S. 651.

The Oklahoma Supreme Court denied certiorari despite the constitutional and federal questions in disparity in the decision below. The only resort to protect Oklahomans is this Court. The Due Process Clause entitles a person to an impartial tribunal, ***Marshall v. Jerrico, Inc.*** 446 U.S. 238 at 242.

IV.

Disparity of State court and federal lower court decisions raises important questions of equal protection for civil rights litigants.

In an effort to relieve federal court congestion and avoid possible hostile and inconsistent decisions litigants reportedly have been turning to state courts. States which are hostile to federal supervision need this court's direction. No less authority than the Library of Congress has interpreted this court's rulings as to the Supremacy clause of the United States Constitution at p. 919, Document No. 99-16, The Constitution of the United States of America, stating that this Court has not spoken to the effect of lower federal court rulings on state courts, which are divided, with many contending they are only obligated to follow this Court's rulings. Yet some states won't abide by those rulings, e.g. ***Proschaska, supra,*** and with this Court's overload it cannot grant hearing to all those abuses. Public suspicion could be decreased or avoided if some consistency prevailed.

A definitive statement on the time for filing a prevailing defendant's motion for attorney fees in state courts is imperative. Petitioner was prejudiced by the lack of a finding of frivolous at the time of granting summary judgment.

CONCLUSION

For these various reasons, this petition for certiorari should be granted. If the petitioner is correct in urging that the attorney fee

award to respondent's counsel, the office of the Attorney General of Oklahoma, should be set aside, the matter should be remanded to the Court of Appeals of Oklahoma, Division 1 for appropriate disposition.

Respectfully submitted,

Roberta Ann Funnell, pro se
P. O. Box 26172
Oklahoma City, Ok 73126
(405) 524-4636

December 23, 1991

APPENDICES

Appendix A, hereto, ***infra***, contains printed copies of the Memorandum Opinion, Orders denying rehearing and certiorari, the Journal Entry of Judgment and related materials all indexed on blue page, ***infra***.

Appendices B and C are separely bound.

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IN THE COURT OF APPEALS
OF THE STATE OF OKLAHOMA

Filed in the Court of Appeals March 26, 1991

ROBERTA ANN FUNNELL,	)	
Appellant,	)	
vs.	)	72,451
ROBERT MARTIN,	)	
Appellee.	)	

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA
COUNTY, OKLAHOMA,

HONORABLE GLENN DALE CARTER, JUDGE

AFFIRMED

Roberta Ann Funnell,
Oklahoma City, Oklahoma, Pro Se,

Robert H. Henry,
Attorney General,
W. Craig Sutter,
Assistant Attorney General,
Oklahoma City, Oklahoma, For Appellee.

MEMORANDUM OPINION

Opinion by Robert L. Bailey, Judge:

Appellant Roberta Ann Funnell (Funnell or Appellant) seeks review of the Trial Court's order awarding attorney's fees to Appellee Robert Martin (Martin or Appellee). Herein, Funnell asserts (1) the judicial process and procedural rules deny her access to the courts, and (2) error of the Trial Court in awarding attorney fees to Martin.

Funnell commenced the instant action against Martin on May 15, 1987 claiming Martin's violation of 42 U.S.C. §1983 and the "laws of Oklahoma" arising from Martin's alleged secreting of certain court files from Funnell. Funnell filed numerous applications and motions to disqualify certain judges of Oklahoma

County, and Judge Glenn Dale Carter was subsequently appointed to preside over Funnell's action. On August 4, 1988, Judge Carter granted summary judgment to Martin on Martin's motion therefore.

Funnell then filed in the Oklahoma Supreme Court an Application to Assume Original Jurisdiction and Petition for Writs of Prohibition/Mandamus against Judges Glenn Dale Carter and Arthur Lory Rakestraw, seeking to prohibit said judges from the conduct of further proceedings on Funnell's complaint. The Supreme Court accepted jurisdiction, but denied Funnell relief.

Martin then filed his application for attorney's fees on November 17, 1988, to which Funnell responded, objecting. The Trial Court nevertheless granted Martin his attorney's fees. From that order, Funnell appeals as aforesaid.

We note appellant appears pro se in the present action. The fact that this lawsuit and its subsequent appeal is conducted pro se does not, in any way relieve appellant of the responsibility to conform her action to the rules of pleading, evidence or appellate practice. A party proceeding pro se is a civil action or a civil appeal is to be held to the same standards as an attorney. ***Funnell*** v. ***Jones***, 737 P.2d 105, 107 (Okla. 1985).

In her first proposition, Funnell asserts that Rule 15, Rules of the District Courts, 12 O.S. 1981, Ch. 2, App., governing disqualification of judges, does "not provide fair procedures in matters of judicial disqualification and are unconstitutional denying access to the courts." The thrust of her contention appears to be that Judge Carter should have been disqualified to hear the trial and subsequent motion for attorney fees.

However, we find our Supreme Court has previously rejected Funnell's pleas for disqualification of Judge Carter from trial on the merits. See, ***Funnell*** v. ***Carter, et al.***, Case No. 71,726 (October 12, 1988, rehe. den. May 31, 1988). Insofar as that issue has been previously decided, we will not address it. Further, and inasmuch as Oklahoma statutes governing disqualification of judges have been approved as not violative of Art. II, §6 of the Oklahoma Constitution prohibiting denial of access to the Courts, we find Rule 15 to be a valid exercise of our Supreme Court's rule making powers to implement the disqualification provisions of Title 20. See, 20 O.S. 1981 §§1401 et seq.; ***Mayes*** v. ***Pitchford***, 20 Okl. 129, 109 P. 821 (1910) (predecessor statute to 20 O.S. §1401 et seq. not violative of Art. II, §6 of Oklahoma Constitution); accord, ***Turner*** v. ***McCain***, 26

Okl. 132, 109 P. 821 (1910); ***Ex parte Hudson,*** 3 Okl.Cr. 393, 106 P. 540 (1910), rehe. den. 3 Okl.Cr. 393, 107 P. 735.

Even reviewing Funnell's arguments on the merits and in the light most favorable to her, we find Funnell has failed to adduce sufficient evidence calling into question the Trial Court's impartiality. We consequently find no abuse of discretion by the Trial Court in refusing to recuse. See, e.g., ***Osage Implement Co.*** v. ***Bottrell,*** 363 P.2d 940 (Okl. 1961) (application to recuse/disqualify addressed to sound discretion of court, and judgment thereon not disturbed absent demonstrable abuse of discretion). See also, ***United States*** v. ***Baskes,*** 687 F.2d 165 (7th Cir. 1981) ("Since a judge is presumed impartial, the party seeking recusal has a substantial burden to overcome the presumption with factual allegations of personal bias stemming from extrajudicial source.")

In her second proposition, Funnell maintains the trial Court abused its discretion in awarding Martin his attorney's fees under 42 US.C. §1983. However, §1983 clearly provides for attorney's fees to the prevailing party at the discretion of the court. In order to show abuse of discretion, it must be shown that the Trial Court made a "clearly erroneous conclusion and judgment, against all reason and evidence." ***Abel*** v. ***Tisdale,*** 619 P.2d 608, 612 (Okl. 1980). Under this standard, we find the Trial Court's award of attorney fees to Martin free of vitiating error and unaffected by abuse of discretion.

The orders of the Trial Court refusing to disqualify and awarding attorney's fee is there AFFIRMED.

ADAMS, P. J. concurs; MacGUIGAN not participating.

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Filed in the Supreme Court September 16, 1991

ROBERTA ANN FUNNELL,	)	
Appellant,	)	
v.	)	No.72,451
ROBERT MARTIN,	)	
Appellee.	)	

Order

On the appellant's application, the effectiveness of this court's mandate, issued on July 30, 1991, is hereby stayed, pending the conclusion of proceedings before the Supreme Court of the United States, or until further order of this court.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 16TH DAY OF SEPTEMBER, 1991.

(ROBERT SIMMS)
ACTING CHIEF JUSTICE

SIMMS, DOOLIN, HARGRAVE, WILSON, SUMMERS, JJ. - concur
OPALA, C.J., HODGES, V.C.J., LAVENDER, KAUGER, JJ. - disqualify

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court, Friday, August 23, 1991.
THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDER:
72,451 - ROBERTA ANN FUNNELL V. ROBERT MARTIN

Appellee given ten days from the date of this order to respond to appellant's application to recall and stay mandate.

(John B. Doolin)
ACTING CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court, Friday, July 26, 1991
72,451 Roberta Ann Funnell v. Robert Martin
Certiorari denied.
CONCUR: Simms, Doolin, Hargrave, Wilson, Summers, JJ.
DISQUALIFIED: Opala, C.J., Hodges, V.C. J., Lavender, Kauger, JJ.

(Marian P. Opala)
CHIEF JUSTICE

RELEASE FOR PUBLICATION IN OKLAHOMA BAR JOURNAL BY ORDER OF COURT OF APPEALS

THE COURT OF APPEALS, DIVISION I,
STATE OF OKLAHOMA

Filed in the Court of Appeals May 30, 1991.

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

72,451 - Roberta Ann Funnell, Appellant, V. Robert Martin, Appellee.

Petition for Rehearing filed by Appellant is hereby DENIED.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court Wednesday, October 12, 1988.
THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

71,726 Roberta Ann Funnell v. The Hon. Glenn Dale Carter, Judge etc.
Application to assume original jurisdiction granted. Request to disqualify Chief Justice denied. Request for stay denied. Petition for writ of prohibition/mandamus denied.
CONCUR: Doolin, C.J., Hargrave, V.C.J., Simms, Wilson, Summers, J.J.
DISQUALIFIED: Hodges, Lavender, Opala, Kauger, J.J.

(John B. Doolin)
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in Supreme Court Wednesday, May 31, 1989.
THE CLERK IS DIRECTED TO ISSUED THE FOLLOWING ORDERS:

71,726 Roberta Ann Funnell v. Hon. Glenn Dale Carter, Judge of the District Court, 23rd Judicial District.
Rehearing denied. Petitioner's request for stay denied.
CONCUR: Hargrave, C.J., Simms, Doolin, Wilson, Summers, JJ.
DISQUALIFIED: Opala, V.C.J., Hodges, Lavender, JJ.,
RECUSED: Kauger, J.

(Marian P. Opala)
VICE CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court, Friday, July 26, 1991
72,451 Roberta Ann Funnell v. Robert Martin
Certiorari denied.
CONCUR: Simms, Doolin, Hargrave, Wilson, Summers, JJ.
DISQUALIFIED: Opala, C.J., Hodges, V.C. J., Lavender, Kauger, JJ.

(Marian P. Opala)
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, January 31, 1989
THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDER:

72,451 - ROBERTA ANN FUNNELL V. ROBERT MARTIN

Appellee to respond to appellant's motion to stay execution of judgment not later than February 8, 1989. Clerk of trial court to forward record on appeal to this Court at once, for use in consideration of such motion to stay.

(Rudolph Hargrave)
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, February 14, 1989

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDER:

72,451 - ROBERTA ANN FUNNELL V. ROBERT MARTIN

Clerk of the trial court to forward record on appeal forthwith, excluding any testimony not yet transcribed, for use in consideration of motion to stay.

Consideration of appellee's application for limitation of issues is deferred until this appeal is considered on its merits. Additional argument, and any pertinent authorities may be included in the answer brief.

(Rudolph Hargrave)
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed: March 13, 1989.

ROBERTA ANN FUNNELL,	)	
	)	
Appellant,	)	
v.	)	No.72,451
	)	
ROBERT MARTIN,	)	
Appellee.	)	

ORDER

Appellant's motion to stay execution of judgment as such is denied, without prejudice to the appellant's statutorily-guaranteed right to postpone the effectiveness of this judgment by posting a supersedeas bond in conformity with 12 O.S. 1981, §968(1).

The appellant's objections to the appellee's counter-designation of record should be urged in the trial court. Rules of Civil Appellate Procedure, Rule 1.20, 1.24, 1.25, and 1.31. ***Tisdale v. Wheeler Bros Grain Company, Inc.***, 599 P.2d 1104 (Okl. 1979). Briefing time will not commence running until notice of completion of record on

appeal is sent to the parties. Rules of Civil Appellate Procedure, Rule 1.28(a).

The appellant's objection to this Court's order of February 14, 1989, is noted.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 13TH DAY OF MARCH, 1989.

(Rudolph Hargrave)
CHIEF JUSTICE

Hargrave, C.J., Simms, Doolin, Wilson, Summers, JJ. - concur
Kauger, J. - Recuse
Opala, V.C.J., Hodges, Lavender, JJ. - Disqualified

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court January 26, 1991

ROBERTA ANN FUNNELL, Plaintiff,	)	
vs.	)	No. CJ-87-5512
JAMES D. FUNNELL, AND HARRIET HUNT FUNNELL, Individually, as Co-Executors of the Estate of JOSEPH W. FUNNELL, Deceased and as Co-Trustees of JOSEPH W. FUNNELL, Irrevocable Trusts, Their Agents, JONATHAN W. BURCH, ARNOLD D. FAGIN, STEPHEN JONES, RONALD R. HUDSON and CHARLES F. ALDEN III, Individually and HOLLOWAY, DOBSON, HUDSON & BACHMAN, a Professional Corporation, and ROBERT MARTIN, Defendants.	)	

ORDER AND JOURNAL ENTRY OF JUDGMENT

NOW on this 19th day of December, 1988, there regularly come on to be heard before me the Motion of Plaintiff for Certification

of Disqualification by Assigned Trial Judge, Objections to Discovery by the Plaintiff, Roberta Ann Funnell, Objections to Discovery by the Defendant, Jonathan W. Burch, and Application for Attorney's Fees by the Defendant, Robert Martin.

The Plaintiff appears without counsel and represents herself in these proceedings. The Defendant, Jonathan W. Burch, appears by counsel Georgiana Peterson. Defendants Hudson, Alden and the law firm of Holloway, Dobson, Hudson and Bachman appear in opposition to the Plaintiff's Motion for Certification of Disqualification by counsel B. J. Cooper. The Defendant, Robert Martin, appears by counsel, James B. Franks, Assistant Attorney General.

The Plaintiff first presents her Motion for Certification of Disqualification. Having considered the record and arguments of parties made is open Court, the Court finds that the Plaintiff has sought disqualification of the undersigned Judge in this matter on several previous occasions, in each of which there has been a full consideration of the merits of the Plaintiff's argument, each prior such Motion having been properly overruled. The Court further finds that the matters now offered by the Plaintiff as additional grounds in support of disqualification lack meaningful substances, and that no grounds for disqualification have been or are now shown to exist.

The Court next considers the objections to discovery by the parties. The Court finds that as neither party has filed any motion to compel discovery in connection with any such objections, all objections made should be allowed to stand at this time.

The Court finally considers the Application for Attorney's Fee by the Defendant, Robert Martin. Having considered the record, heard arguments of the parties made in open Court, and being fully advised in the premises, the Court finds as follows. The Defendant, Robert Martin, was sued for substantial money damages by the Plaintiff upon accusations that said Defendant used his position as Court Administrator for Oklahoma and Canadian Counties, to secrete, alter or otherwise tamper with Court records in which the Plaintiff had an interest, all done in furtherance of a conspiracy to harm the Plaintiff and deny her rights secured to her under the Constitution and laws of the United States. After discovery was had by the Plaintiff and fully answered by the Defendant, Robert Martin, said Defendant asked for and was granted Summary Judgment on the merits against the Plaintiff upon grounds, among others,that he engaged in no conspiracy and acted at all times in good faith, within

the normal and ordinary duties of his office, pursuant to proper orders and directives of the District Court, with no intention or desire to harm or damage the Plaintiff in any way. The Defendant, Robert Martin, is therefore the prevailing party in this action against him by the Plaintiff.

The Court further finds that the Plaintiff wholly failed to adduce any evidence whatsoever implicating the Defendant, Robert Martin, in any conspiracy or wrongdoing of any character, or connecting his conduct with damages, if any which the Plaintiff may have suffered. The Court therefore finds that the action by the Plaintiff against the Defendant, Robert Martin, was without basis in law or fact and was frivolous. Consequently, the Court finds that the Defendant, Robert Martin, is entitled to reasonable attorney's fees to be assessed as costs against the Plaintiff, under the authority of 42 U.S.C. §1988.

The Court further finds that counsel for the Defendant, Robert Martin, reasonably provided seventy-five and four-tenths (75.4) hours of legal services in the course of defending said Defendant in District Court, at a cost of Fifty-Three Dollars and Five Cents ($53.05) per hour, all of which ought to be allowed as fees in full. Finally, the Court finds that additional fees for services on behalf of the Defendant, Robert Martin, in related proceedings under the original jurisdiction of the Oklahoma Supreme Court should be sought from the Supreme Court, and will not be allowed in this proceeding at this time.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Motion of Plaintiff for Certification of Disqualification by Assigned Trial Judge ought to be and is hereby overruled, that existing objections to discovery between the Plaintiff and the Defendant, Jonathan W. Burch, shall be allowed to stand as made until such time as either party may present a motion, if any, to compel discovery, and that the Defendant, Robert Martin, shall be, and is hereby allowed a reasonable attorney's fee in the total amount of Three Thousand Nine Hundred Ninety-Nine Dollars and Ninety-Seven Cents ($3,999.97) which shall be a judgment in the Defendant's favor and against the Plaintiff, with post-judgment interest at the lawful rate.

(Glenn Dale Carter)
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:
(Refused to sign 1/16/89) initialed by GDC.

Roberta Ann Funnell, Plaintiff Pro Se

(Georgiana Peterson # 10321)
Georgiana Peterson, for
Defendant Jonathan W. Burch

(Daniel Owen for B. J. Cooper)
B.J. Cooper for Defendants, Hudson, Alden and
the law firm of Holloway, Dobson, Hudson and Bachman

(Cathy Dabney for James Franks)
James B. Franks for Defendant, Robert Martin

Copy certified by District Court Clerk.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court July 7, 1989.

Roberta Ann Funnell,	)	
Plaintiff,	)	
	)	
vs.	)	No. CS-87-5512
	)	
James D. Funnell, et al,	)	
Defendants	)	

RULING

Plaintiff's motion to disqualify the Trial Judge is DENIED.

DATED this 7th day of July, 1989.

(Gary R. Brown)
G a r y
R. Brown
District Judge

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in district court January 31, 1989.

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
vs.	)	CJ-87-5512
JAMES D. FUNNELL,	)	
etc., et al.,	)	
Defendants.	)	

JOURNAL ENTRY

NOW on this 26th day of January, 1989, this matter comes on regularly to be heard by the parties upon the various motions currently pending before this Court. The Plaintiff, Roberta Ann Funnell, appears pro se; the Defendant Jonathan W. Burch appears by and through counsel of record, Georgiana Peterson; and the Defendant Robert Martin appears by and through counsel of record Cathy Clinton Dabney, Assistant Attorney General.

The Court considered the JOURNAL ENTRY prepared by counsel reflecting the rulings of the Court at the hearing held on January 3, 1989, and finding that no objection to the said Journal Entry has been presented, the Journal Entry was executed by the Court and filed of record.

The Court considered the JOURNAL ENTRY prepared by counsel reflecting the rulings of the Court at the hearing held on December 19, 1988. The Court considered objections and responses filed of record thereto and hear arguments of the Plaintiff and counsel. The Court held that the Journal Entry should be entered as a record of the rulings of the Court at the hearing held on December 19, 1988, and the said Journal Entry was executed by the Court, over the objections of the Plaintiff, and the said Journal Entry was ordered to be filed of record.

The Court proceeded to hear and rule on the OBJECTIONS TO DISCOVERY filed by the Defendant Burch. The Court, having considered the pleadings of record and the arguments of Plaintiff and counsel, finds that the Defendant Burch's OBJECTIONS to the Plaintiff's Request for Admission to Defendant Burch numbered 1, 2,3, 4, and 5 should be and are hereby OVERRULED; the Defendant Burch's OBJECTIONS to the Plaintiff's Request for Admissions to

Defendant Burch numbered 6,7,8, 11, 12, 13, 14, 15, and 17 should be and are hereby SUSTAINED.

FURTHER, the Defendant Burch's OBJECTION to the Plaintiff's Request for Admission to Defendant Burch numbered 9 should be and is hereby OVERRULED as to an admission of the genuineness of the letter and SUSTAINED as to Plaintiff's request for an admission as to the intent to mislead the Plaintiff. The Defendant Burch's OBJECTION to the Plaintiff's Request for Admission to Defendant Burch numbered 10 should be and is hereby OVERRULED as to an admission of genuineness of the correspondence and is SUSTAINED as to the Plaintiff's request for an admission as to the Truthfulness of the correspondence.

The Defendant Burch's OBJECTION to the Plaintiff's Request for Admission to Defendant Burch numbered 16 should be and is OVERRULED , only insofar as the Defendant is hereby ORDERED to respond only as to correspondence in the Defendant Burch's possession which was generated by any of the attorneys named in the Request in their capacity as counsel for the Plaintiff; provided further that prior to the Defendant's compliance with this Request, the plaintiff is hereby ORDERED to execute and deliver to the Defendant a written WAIVER and RELEASE of Attorney client Privilege as to each of the named Attorneys in favor of the Defendant Burch, the Plaintiff is hereby ORDERED to execute and deliver said documents(s) within five (5) days of this date.

Upon the APPLICATION of the Plaintiff to enlarge the number of interrogatories which may be promulgated to the Defendant Burch, having heard arguments of Plaintiff and over Defendant Burch's objection the Court finds that the said Application should be and is hereby GRANTED. The Defendant is hereby ORDERED to Respond to said second set of Interrogatories within thirty (30) days from this date.

Upon the OBJECTION of the Plaintiff to the form of the question as to the interrogatory submitted by Defendant Burch, the Court finds that the said Objection is hereby OVERRULED and the Plaintiff is hereby ORDERED to the designate to the Defendant Burch within five (5) days from this date those specific pages of the transcripts of proceedings referred to in her Response to the Defendant's Interrogatories.

Upon the Plaintiff's MOTION TO STAY the effectiveness of the money judgment awarded December 19, 1988, the Court having considered the briefs of the parties and having heard the arguments

of Plaintiff and counsel for Defendant Robert Martin, finds that the Motion to Stay should be and is hereby DENIED.

As to the MOTION FOR SUMMARY JUDGMENT of the Defendant Burch, the Court concludes that the response time for said Motion expires on this date and that said Motion is not yet ripe for determination. The Plaintiff's MOTION FOR EXTENSION OF TIME within which to respond to said Motion for Summary Judgment is hereby DENIED, the Court finding that no good cause exists for enlarging the response time. It is therefore ORDERED that the Defendant's Motion for Summary Judgment shall be heard by this Court on Tuesday, January 31, 1989, at 3:30 p.m. over the objection of Plaintiff.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

(Glenn Dale Carter)
GLENN DALE CARTER
DISTRICT JUDGE

Approved as to form:

(Roberta Ann Funnell)
Roberta Ann Funnell
Plaintiff Pro Se
2306 S. E. 49th St., #124
Oklahoma City, Ok 73129
(405) 670-1943

(W. Craig Sutter) OBA #12883 for
Cathy Clinton Dabney, OBA #2127
Assistant Attorney General
For the Defendant Robert Martin
420 w. Main Street, Suite 550
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(Georgiana Peterson)
Georgiana Peterson, OBA *10321
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Copy certified by District Court Clerk.

[T-1]

IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA
Filed in District Court February 18, 1989.

FUNNELL,)
-vs-) CJ-87-5512
FUNNELL, ET AL)

MOTION HEARING

BE IT KNOWN that on the 19th day of December, 1988, the above-styled cause came on for hearing before the HONORABLE GLENDALE CARTER, at which time the following proceedings were had, to wit:

APEARANCES:

FOR THE PLAINTIFF: Roberta Funnell, Pro S E
2306 SE 49th
Oklahoma City, OK

FOR THE DEFENDANTS: Jim Franks/
420 West Main, Suite 550
Oklahoma City, OK
B. J. Cooper
P.O. Box 1336
Oklahoma City, OK
Georgiana Peterson
15 N. Robinson, Suite 600
Oklahoma City, OK

DISTRICT COURT OF OKLAHOMA-OFFICIAL TRANSCRIPT

[T-2]

BY THE COURT: All right. We need to identify the issues that are before the Court. The Plaintiff's communication in letter form dated November the 25th, 1988, which purports to be an in camera request for disqualification of trial judge is denied. I also show ripe to be heard today the Defendant

Burch's objections to discovery; the Plaintiff's objections to discovery, and the Defendant Robert Martin's Application for Attorney's Fees.

Are there other motions that are ripe to be heard?

MS. FUNNELL: Yes, Your Honor, there are. My Plaintiff's Motion for Certification of Disqualification, which was served on Your Honor on 12/9.

BY THE COURT: I have eluded to your letter of November the 25th.

MS. FUNNELL: I understand, sir. But I followed that up with a motion.

BY THE COURT: I don't think I have that. I don't think I've ever seen that.

MS. FUNNELL: Well, this is a copy with the signature of of the Judge's secretary.

BY THE COURT: All right. Let's see. What else is there? Are there other matters to be heard in addition?

MR. FRANKS: In connection with this, Your Honor, our office was served with that on December 12th, which means that our response time under Rule 4 would not have yet elapsed.

BY THE COURT: Fifteen plus three would be served by mail; so that would appear that motion's not ripe to be heard.

MS. FUNNELL: Well, according to the rule, it's ten days prior to the hearing when the motion is to be filed, and

that's when I filed it.
BY THE COURT: All right. The Court rules that motion's not ripe to be heard.
MS. FUNNELL: Well, I vigorously object to that

[T - 4, Continued]

because this is running over my rights again, Your Honor. That the motion should be heard first of all; just as it was heard in August, the first thing.
BY THE COURT: I've heard -- Every time we have convened I've heard a similar motion, and your objection is noted for the Record.

All right. Let's hear the motion, or the objection of Defendant Burch to discovery. There are some seventeen --
MS. PETERSON: Your Honor, if I could have a moment to find that particular document in my file. Maybe the Motion for Attorney's Fees can be heard first.
BY THE COURT: All right.
MS. FUNNELL: Your Honor, I am again going to object to the presentation of the Motion for Attorney's Fees. Your Honor is disqualified to act on this. My motion with attached affidavits makes it very clear, and there is a stay of proceedings pending in the Supreme Court which they have not yet acted upon that relates directly to the conduct at the last hearing. There is nothing that would allow Mr. Franks to respond, have fifteen days to respond to the Motion for Certification of Disqualification because it would be absurd for

the rule to be you have ten days, the law to be you have three days. And now they want to have time to respond and Your Honor is saying it's not ripe. It is ripe under the law. It is

[T-5, Continued]

ripe under the rules. And I'm -- We previously had a problem with running over my Constitutional rights by proceeding to hear matters without the proper time being allowed for me to pursue the disqualification certification.

Now, this is a whole new thing that you all have cooked up that he -- It's not ripe to be heard, and it is ripe under the rules and under the law. And furthermore, on the merits would have to -- I mean the matter of the attorney's fees would have to be argued on the merits. If I had an opportunity to present anything regarding that, I would waive the disqualification. We got into this before. And I think that Your Honor should by now, by all the pleadings that you've received copies from the matters of the Supreme Court, fully recognize what the problem is. And that is under the rulings that have previously been made in the Tenth Circuit, and adopted by the Oklahoma Supreme Court, I waive disqualification when I participate in anything having to do with the merits.

DISTRICT COURT OF OKLAHOMA-OFFICIAL TRANSCRIPT

[T-10]

BY THE COURT: All right. The Attorney General may respond.

MR. FRANKS: Thank you, Your Honor. The question of the Court's disqualification of course has been before it

on several occasions in this case, and Defendant Martin has previously filed written responses to various attempts to disqualify the Court. We would not have any objection to having the Plaintiff's current motion for disqualification heard prior

[T - 10, Continued]

to the Court's consideration of our application for attorney's fees today, providing you would permit me to orally move to adopt previous written responses by my client in opposition to the current motion. I'm unable to detect, in any real fashion, the current motion raises any additional or new meaningful grounds for disqualification. So with that condition, we'd have no problem with the Court's considering the current motion for disqualification prior to hearing our application for attorney's fees.

BY THE COURT: All right. What says Defendant Burch?

DISTRICT COURT OF OKLAHOMA-OFFICIAL TRANSCRIPT

[T-11]

MS. PETERSON: Defendant Burch has no objection to hearing that motion.

BY THE COURT: All right. Mr. Cooper, are you still--

MR. COOPER: the Court has dismissed this. Our interest is only in connection with the ultimate resolution of this matter. We would ultimately have an application to present to the Court for attorney's fees, but we have been waiting to see what happens in the Supreme Court.

BY THE COURT: All right. I understand everyone is in agreement with the motion for disqualification being heard.

MR. FRANKS: Under those conditions, Your Honor, no problem.

BY THE COURT: All right. Present your motion.

MS. FUNNELL: I would like to state that I do object to the idea of my -- My just presenting this motion and then them going ahead with their application for attorney's fees, because if Your Honor should deny this, then I would again have the right for it to be heard by another Judge.

[T - 11, Continued]

Now, I don't think that it has been fully understood by the Court that this case has to do with Federal civil rights, conspiracy and fraud. And that requires every opportunity to gather and present my case, which is mostly against attorneys and a Court employee.

The Judges here were disqualified for various reasons. And we didn't have a Judge to settle any possible discovery

DISTRICT COURT OF OKLAHOMA-OFFICIAL TRANSCRIPT

[T-37]

MS. FUNNELL: I am not in a position to -- Under the -- Again, I cannot ask for a stay or a continuance or anything because of waiving disqualification. So I'm again in a catch 22 position, that's why I've not made any comments or any response to this matter of the Burch matter because we have other things pending relating to the disqualification.

BY THE COURT: All right. As far as I'm concerned, then there's -- It stands as your responses provided. All right. Ms. Funnell, I believe you had some objections to their interrogatories and their discovery.

MS. FUNNELL: Again, I have not prepared to discuss that because of the pending matter of disqualification.

BY THE COURT: All right. Have you filed a motion to compel?

MS. PETERSON: No, sir, I have not.

BY THE COURT: That leaves the Attorney General's

Application for Assessment of Attorney's Fees.

DISTRICT COURT OF OKLAHOMA-OFFICIAL TRANSCRIPT

[T-41]

MS. FUNNELL: Now, anything further that I would have to say would have to go directly to the merits of the lawsuit; that is what I

[T-41, Continued]

cannot respond to and should be made to be put in the position of having to respond to. And that it's unconstitutional, it is a denial of my rights of due process for this matter to have been presented, and for me to have to respond to it, other than what I have done to point out the improper interpretation of law.

BY THE COURT: Close the argument.

MR. FRANKS: Your Honor, I mean no humor in this whatsoever because it is very sad, but the Plaintiff's conduct in these proceedings reminds me of nothing so much of a naughty child who run the doorbell -- Rings the doorbell and then runs away. We are entitled to have this matter heard, if the Plaintiff chooses not respond, so be it.

Absolute judicial immunity is only one of the grounds on which Robert Martin relied in his Motion for Summary Judgment. At least is important is the fact that he was totally innocent and no attempt was even made to show otherwise, There was no wrong doing either in his heart or in his acts. He was put in jeopardy of severe financial harm because of

DISTRICT COURT OF OKLAHOMA-OFFICIAL TRANSCRIPT

[T-42]

frivolous allegation made against him. He is entitled to this fee, Your Honor.

BY THE COURT: The Court finds for the movant and against the respondent on the issue of attorney's fees. The

Court finds that the action against Robert Martin was frivolous and without merit. The Court adjudicates fees in the amount of seventy five point four oh (75.40), which is the number of hours in the trial court, excluding the Supreme Court. If they want to refer this back to the trial court for the purposes of acting as their representative or master to determine that issue, I'll take that up at that time, times fifty three oh five (5305) which is, according to your affidavit, the actual expense to the taxpayers. I have a figure of Thirty-Nine, Ninety-Nine point Nine Seven (3,999.97), but I wouldn't guarantee the math of it. It's Seventy-Five Forty times Fifty Three Oh Five. All Right. Now, we're --

MS. FUNNELL: Your Honor, I take exception.

BY THE COURT: All right. With respect to the settlement of the Journal Entry, in as much as you're the prevailing party, you'll need to prepare the Journal Entry and circulate it to those who participated in the action. It's not necessary for the spectators or those who were nominally present to sign off on it, but those who actually participated in the proceedings. Try to have the Journal Entry to me within ten days. If there is, as there has been in the past, disputes

concerning the settlement of the Journal Entry, I'll settle them incidental to pre trial which as I indicated has previously been set a month ago for 1:30 p. m. on Wednesday, January 3rd, 1989, I believe -- Tuesday, January 3rd, 1989, 1:30 p.m. Is there anything further before this matter stands in recess?

MR. FRANKS: Your Honor, if I understood the proceedings, the Plaintiff was the only party actually participating on the Application for Attorney's Fees.

BY THE COURT: No, Ms. Peterson and Mr. Cooper.
MR. FRANKS: Very good.
MR. COOPER: I assume the Journal Entry will cover all rulings of the Court.
BY THE COURT: Yes. I'm asking you to deal with all --
MR. FRANKS: I'm sorry, Your Honor, I misunderstood. I'll be happy to do that.

[T-43, Continued]

BY THE COURT: On everything that was entertained. All right. Nothing further, this matter will stand in recess.

(END OF PROCEEDINGS)

DISTRICT COURT OF OKLAHOMA-OFFICIAL TRANSCRIPT

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CERTIFICATE

STATE OF OKLAHOMA)
) ss.
OKLAHOMA COUNTY)

I, Rebecca Sinor, Certified Shorthand Reporter within and for the State of Oklahoma and for the Oklahoma County District Court do hereby certify that as such the foregoing hearing was taken by me in stenograph and later reduced to typewritten form as it now appears.

I further certify that the foregoing transcript of said hearing is a full, complete and correct transcript of said hearing, so taken.

I further certify that I am not an attorney for, nor relative of any of the parties involved in this action, or otherwise interested in the event of same.

Witness my hand and seal this 24th day of February, 1989.

(Rebecca Sinor)
REBECCA SINOR, CSR

DISTRICT COURT OF OKLAHOMA-OFFICIAL TRANSCRIPT

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

Filed in District Court November 18, 1988.

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
-vs-	)	NO. CJ-87-5512
JAMES D. FUNNELL, et al.,	)	
Defendants.	)	

JOURNAL ENTRY

NOW on the 14th day of October, 1988, there came on for hearing Plaintiff's Request for Rehearing Plaintiff's Motion for Certification of Disqualification by Trial Judge over objection of Plaintiff; and the Motion of Defendants Ronald R. Hudson's, Charles F Alden, III's and the law firm of Holloway, Dobson, Hudson & Bachman's Motion to Settle Journal Entry; Defendant Jonathan Burch's Motion for Summary Judgment; Defendant Jonathan Burch's Motion for Enlargement of Time to Respond to Plaintiff's Discovery; Defendant Jonathan Burch's Motion to Compel Answers to Interrogatories; and the Motion to Quash Summons served upon Robert Dennis and Terri Dismuke. The Plaintiff, Roberta Ann Funnell, was present ***pro se***. Defendant Arnold Fagin appeared by counsel, Robert Smith. Defendants James D Funnell and Harriet Hunt Funnell appeared by counsel Ronald R. Hudson and Charles F. Alden III. Defendants Ronald R. Hudson, Charles F. Alden III, and the law firm of Holloway, Dobson, Hudson & Bachman appeared by counsel, B. J. Cooper. Defendant Robert Martin appeared by counsel, Assistant Attorney General Cathy Clinton Dabney. Defendant Jonathan Burch appeared by counsel, Georgiana Peterson. Respondents Robert Dennis and Terri Dismuke appeared by Counsel, Steven K. Mullins. The Court, having examined the Briefs, having heard arguments of counsel and being fully advised in the premises finds as follows:

1. The Motion to Settle Journal Entry of the Defendants, Ronald R. Hudson, Charles F. Alden III, and the law firm of Holloway, Dobson, Hudson & Bachman should be sustained. Exception granted to plaintiff.

2. The Request for Rehearing Plaintiff's Motion for Certification by trial judge should be denied. Exception granted to Plaintiff.
3. The Motion to Quash the Summons purportedly served upon Robert Dennis and Terri Dismuke should be sustained. Exception granted to Plaintiff.
4. The Motion for Summary Judgment of the Defendant Jonathan Burch was not timely filed and was, therefore, not considered by the Court.
5. The Motion for Enlargement of Time to Respond to Plaintiff's Discovery of the Defendant Jonathan Burch was timely filed and Defendant Burch should be granted until October 25, 1988, in which to respond to Plaintiff's discovery.
6. The Motion to Compel Answers to Interrogatories of Defendant Jonathan Burch should be sustained and Plaintiff should be granted fourteen (14) days within which to comply.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion to settle Journal Entry of the Defendants Ronald R. Hudson, Charles F. Alden, III, and the law firm of Holloway, Dobson, Hudson & Bachman is hereby sustained. Exception granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion to Reconsider the Motion to Disqualify of the Plaintiff Roberta Ann Funnell is hereby denied. Exception granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion to Quash the Summons purported to have been served upon Robert Dennis and Terri Dismuke is hereby sustained. Exception granted.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Motion for Summary Judgment of the Defendant Jonathan Burch is not considered, as it was not timely filed.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Motion for Enlargement of Time to Respond to Plaintiff's Discovery of the Defendant Jonathan Burch is hereby sustained, and the Defendant Burch is granted until October 25, 1988, to respond to the Discovery.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Motion to Compel Answers to Interrogatories of the Defendant

Jonathan Burch is hereby sustained and the Plaintiff is granted fourteen (14) days from October 14, 1988, within which to comply.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the action against the Defendant Jonathan Burch is set for Pre-trial on January 3, 1989 at 1:30 p.m.

(Glenn Dale Carter)
GLENN DALE CARTER
JUDGE OF THE DISTRICT COURT

APPROVED:

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL, PRO SE
2306 S.E. 49th Street, #124
Oklahoma City, Oklahoma 73129

(Georgiana Peterson)
GEORGIANA PETERSON OBA #10321
ATTORNEY FOR JONATHAN BURCH,
JUDGE OF THE DISTRICT COURT

(Robert c. Smith, Jr.)
ROBERT C. SMITH, JR.
ATTORNEY FOR ARNOLD FAGIN

(Ronald R. Hudson)
ROBERT R. HUDSON,ATTORNEY FOR JAMES FUNNELL AND HARRIET HUNT FUNNELL

(B. J. Cooper)
B. J. COOPER, OBA #1884
ATTORNEY FOR RONALD R. HUDSON, CHARLES F. ALDEN, III, AND HOLLOWAY, DOBSON, HUDSON & BACHMAN

(Cathy Clinton Dabney)
CATHY CLINTON DABNEY OBA #2127
ATTORNEY FOR ROBERT MARTIN

(Steven K. Mullins)

STEVEN K. MULLINS
ASSISTANT UNITED STATES ATTORNEY

Copy certified by District Court Clerk.

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT, STATE OF OKLAHOMA
OKLAHOMA AND CANADIAN COUNTIES
OKLAHOMA CITY, OKLAHOMA 73102

Arthur Lory Rakestraw

September 7, 1988

CJ-87-5512

ROBERTA ANN FUNNEL VS JAMES D. FUNNELL, et al

TO WHOM IT MAY CONCERN:

This is to notify you that all pending motions in the above mentioned case are set for hearing before Judge Glenn Dale Carter, on Friday, October 14, 1988, at 1:30 p.m., in courtroom 520 at the Oklahoma County Courthouse.

(Arthur Lory Rakestraw)
ARTHUR LORY RAKESTRAW
SEVENTH JUDICIAL DISTRICT

ALR:dlr
cc:

Judge Glenn Dale Carter	Robert C. Smith, Jr.
Roberta Ann Funnell	Earl D. Mills
B.J. Cooper	Reggie Whitten
Kathy Dabney	Tom L. King
Georgiana Peterson	Edward Ray

Exhibit B-1

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court October 14, 1988.

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
-vs-	)	CJ-87-5512
JAMES D. FUNNELL, etc. et al.,	)	
Defendant.	)	

JOURNAL ENTRY

NOW on the 4th day of August, 1988, there came on for hearing plaintiff's Motion to Disqualify and various motions by defendants. The ***pro se*** plaintiff, Roberta Ann Funnell, was present. Defendant Arnold Fagin was present by and through counsel, Robert Smith. Defendants James Funnell and Harriet Hunt Funnell were present by and through counsel, Ronald Hudson. Defendants Ronald R. Hudson, Charles F Alden, III and the law firm of Holloway, Dobson, Hudson & Bachman were represented by counsel William Devinney. Defendant Stephen Jones was present by counsel, Joseph T. Acquaviva. Defendant Robert Martin was present by and through Counsel, Cathy Clinton Dabney. Defendant Jonathan Burch was present by and through counsel, Georgiana Peterson. The Court, having examined the Briefs and having heard argument of counsel, found as follows:

I.

That the Motion to Disqualify filed by the ***pro se*** plaintiff was denied.

II.

That the Motion to Dismiss of defendant Arnold Fagin was granted on the merits.

III.

That the Motion for Summary Judgment of defendants James Funnell and Harriet Hunt Funnell was granted on the merits. The Court ruled that those causes of action asserted in CJ-71-2464 (D/C of Okl. Cty.) and CIV-85-1489-A (USDC/Western District of Oklahoma), were re-asserted in the instant case and that this judgment rendered in the instant case applied to those re-asserted claims and causes of action.

IV.

That the motion for Summary Judgment of Ronald R. Hudson, Charles F Alden, III and the law firm of Holloway, Dobson & Bachman was granted on the merits.

V.

That the Motion to Dismiss of Stephen Jones was Granted on the merits.

VI.

That the Motion for Summary Judgment of defendant Robert Martin was granted on the merits.

VII.

That plaintiff's Motions for Extension to Respond to Dispositive Motions of the above-named defendants were denied for her failure to present.

VIII.

That the Application for Sanctions including that of dismissal of the case filed by Jonathan Burch was denied as to the dismissal; the requested sanctions of Burch and other defendants seeking attorney fees based on the plaintiff's non-appearance at deposition were deferred.

IX.

The Court further noted that the ***pro se*** plaintiff, Roberta Ann Funnell, after the denial of her Motion to Disqualify, declined to participate further in argument but remained present in the courtroom during portions of argument of counsel on the dispositive motions.

X.

The Court further found that defendant Jonathan Burch's Application to extend time in which to file a dispositive motion should be extended until September 1, 1988, with the plaintiff to be allowed pursuant to District Rule 4(e), 15 days in which to respond to said dispositive motion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendants Arnold Fagin, James Funnell and Harriet Hunt Funnell, Ronald R. Hudson, Charles F. Alden, III, and the law firm of Holloway, Dobson, Hudson & Bachman, Stephen Jones and Robert Martin have and recover judgment as against plaintiff together with their costs.

(Glenn Dale Carter) (14 Oct for
GLENN DALE CARTER 4 Aug '88)
JUDGE OF THE DISTRICT COURT

APPROVED:

(Georgiana Peterson)
GEORGIANA PETERSON OBA #1032A
ATTORNEY FOR JONATHAN BURCH

(Robert C. Smith, Jr.)
ROBERT C. SMITH, JR.
ATTORNEY FOR ARNOLD FAGIN

(Ronald R. Hudson)
RONALD R. HUDSON,ATTORNEY FOR JAMES FUNNELL AND HARRIET HUNT FUNNELL

(William C. Devinney)
WILLIAM C. DEVINNEY, ATTORNEY FOR RONALD R. HUDSON, CHARLES F. ALDEN, III AND HOLLOWAY, DOBSON, HUDSON & BACHMAN

(Joseph T. Acquaviva)
JOSEPH T. ACQUAVIVA
ATTORNEY FOR STEPHEN JONES

(Cathy Clinton Dabney)
CATHY CLINTON DABNEY #2127
ATTORNEY FOR ROBERT MARTIN

(Refused to sign and exception taken)
ROBERTA ANN FUNNELL, PRO SE

Copy certified by District Court Clerk.

[T-1]

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
Filed in the District Court March 15, 1990.

ROBERTA ANN FUNNELL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CJ-87-5152
	)	
JAMES D. FUNNELL, et al.,	)	
	)	
DEFENDANTS	)	

TRANSCRIPT
of

Proceedings had in the above entitled and numbered cause on the 4th day of August, 1988, in District room No. 520 of the Oklahoma County Courthouse, in the City of Oklahoma City, County of Oklahoma, State of Oklahoma.

BEFORE: THE HONORABLE GLENN DALE CARTER - Presiding Judge

APPEARANCES

FOR THE PLAINTIFF:	Pro se
FOR THE DEFENDANTS: JAMES D. FUNNELL AND HARRIET HUNT FUNNEL:	RONALD R. HUDSON Attorney at Law Suite 900 One Leadership Square 211 North Robinson Oklahoma City, Oklahoma 73102
FOR THE DEFENDANT, JONATHAN W. BURCH:	GEORGIANA PETERSON Attorney at Law 15 North Robinson Suite 600 Oklahoma City, Oklahoma 73102
FOR THE DEFENDANT, ARNOLD D. FAGIN:	ROBERT C. SMITH, JR. Attorney at Law 1719 First National Center Oklahoma City, Oklahoma 73102

FOR THE DEFENDANT, STEPHEN JONES	JOSEPH T. ACQUAVIVA, JR. Attorney at Law 500 One leadership Square 211 North Robinson

	Oklahoma City, Oklahoma 73102
FOR THE DEFENDANTS, RONALD HR. HUDSON, CHARLES F. ALDEN III, AND HOLLOWAY, DOBSON, HUDSON & BACHMAN:	WILLIAM C. DEVINNEY Attorney at Law P. O. Box 1336 Oklahoma City, Oklahoma 73101
FOR THE DEFENDANT, ROBERT MARTIN:	CATHY CLINTON DABNEY Assistant Attorney General Deputy Chief, Tort Defense Division 4500 North Lincoln Blvd. Lower Level, Suite 102 Oklahoma City, Oklahoma 73105
REPORTED BY:	NANCY A. BUTTERFIELD, CSR, CP, CM. Suite 303 Pottawatomie County Courthouse Shawnee, Oklahoma 74801

DISTRICT COURT OF OKLAHOMA--OFFICIAL TRANSCIPT COPY

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The Motion for Disqualification is denied.

Now, what other motions have been filed? I -- I set a scheduling order that set a number of motions to be --

ROBERTA FUNNELL: Your Honor, I take exception to the denial. And I will go ahead and appeal this.

THE COURT: All right.

ROBERTA FUNNELL: And I feel it's inappropriate to hear any other motions.

THE COURT: Well, if you -- you know, I'm going to deal with what's before the Court, ma'am. You--

ROBERTA FUNNELL: Well, I'm sorry, Your Honor, but that puts me in the position that I cannot respond, because

--
THE COURT: Okay.
ROBERTA FUNNELL: -- if I respond, then I'm accepting your jurisdiction, and this will invalidate my whole procedure here.
So, therefore, for you to continue with hearing the motions, knowing that -- that position, then I feel, again, my constitutional rights are denied, and that I'm put

[T-18]

in the position that I cannot speak.
THE COURT: Okay. You do what you chose, ma'am. as long as it doesn't violate the decorum of the courtroom.
ROBERTA FUNNELL: May -- May I go ahead and leave, then, Your Honor, because I --
THE COURT: If -- If you chose to. I'm --
ROBERTA FUNNELL: I cannot stay. I had a heat stroke this morning --
THE COURT: Well, you do what you choose to, ma'am, just as long as you don't violate the decorum of the Court.
ROBERTA FUNNELL: I'm not trying to violate --
THE COURT: The -- If -- You've --
ROBERTA FUNNELL: Your Honor --
THE COURT: You've asked if you wanted to leave --

[T-18, Continued]

could leave, and I've said if that's what you chose to do, you may do so.
ROBERTA FUNNELL: Well, I cannot stay, because I'm --
THE COURT: All right.
ROBERTA FUNNELL: -- ill, and I cannot -- I did not bring my file. And I came only for this motion. And I feel it's inappropriate to go ahead and hear this and -- knowing that I cannot respond. I cannot respond, and I cannot sit here and listen to this when I cannot respond.

[T-19]

THE COURT: Well, you do as you --
ROBERTA FUNNELL: I'm sorry, Your Honor.
THE COURT: -- you do as you choose.
MR. DEVINNEY: May it please the Court, Your Honor -- William Devinney again -- before Mrs. Funnell leaves, I would like to point out that she has filed, among the motions that have been filed in this case, numerous Motions for Extension of Time and Protective Order on the part of the Plaintiff. And I'd like to know if they are going to be heard today.
THE COURT: What I'm going to try to do is identify what motions are on file. I've not received any formal pleadings other than Ms. Funnell sent me copies of the Motion to Disqualify since I was last here. So -- And it looks like there's been a lot of things occur in this case since that time. So, I need to try to identify what's --what's on file, what's ripe.
MS. DABNEY: Your Honor, the Defendant Robert Martin did file a Motion for Summary Judgment. And that Motion for Summary Judgment, together with supporting evidentiary materials, was duly served on the Plaintiff--
THE COURT: Okay.
MS.DABNEY: -- approximately two months ago.
THE COURT: Has there been a response to it?

MS. DABNEY: Your Honor, she filed a Controverted

[T-20]

Statement of Material Facts, but no response exactly was filed. But there were -- some sort of documents were filed.
THE COURT: All right. I'm hearing that the Defendant Robert Martin has filled a Motion for Summary Judgment and there has been a response.
MS. DABNEY: Well, it -- I -- I presume that she --
THE COURT: All Right.
MS. DABNEY: -- intended that as her --
THE COURT: All right.
MS. DABNEY: -- response.

THE COURT: All Right. What other motions have been filed?

DISTRICT COURT OF OKLAHOMA--OFFICIAL TRANSCRIPT-COPY

[T-22]

THE COURT: All right. Under the rules, the Plaintiff has five days in which to reurge the disqualification before the Chief Judge. And rather than --

DISTRICT COURT OF OKLAHOMA--OFFICIAL TRANSCRIPT-COPY

[T-23]

than engage in a vain and futile act, it's my inclination to defer hearing these matters until that period of time has run. And if an adverse ruling occurs with the Chief Judge, she then has, as I recall, five days to appeal that to the Supreme Court.

And it's my feeling that those opportunities for appeal should be exhausted prior to my entertaining these motions that are dispositive in nature, because there's no point in your spending two hours or three hours arguing motions only to have them nullified by the sustention of an appeal from my order denying disqualification of the Court.

I'll give each of you an opportunity to be heard on it. Ms. Funnell, I notice you have not left the courtroom. Do you want to be heard on that matter?

ROBERTA FUNNELL: The matter of the five days before the Chief Judge?

[T-23, Continued]

THE COURT: Yes, ma'am.

ROBERTA FUNNELL: Well, the Chief Judge in this courthouse is disqualified, as I understand it.

THE COURT: Well, you have the right appeal, and you indicated you were going to pursue your appeal.

ROBERTA FUNNELL: Yes.

THE COURT: And -- And the issue that is before the Court and which I'm asking counsel to address, if they choose to, is whether or not I should proceed to hear the

DISTRICT COURT OF OKLAHOMA--OFFICIAL TRANSCRIPT-COPY

[T-24]

motions that are otherwise ripe today, or if I should wait until there has been an opportunity to resolve those issues related to disqualification of the trial court where there is the right to an automatic appeal.

MS. DABNEY: Your Honor, on behalf of the Defendant Robert Martin, this Defendant would strongly urge this Court to continue on, to consider the dispositive motions that, for the most part, have been pending before this Court for two months. And to delay hearing of this matter any further would just give the Plaintiff reason to believe that she might have a basis for disqualification where she really doesn't have it.

To the extent that she has a right of appeal, she can proceed with her right of appeal, even after you have ruled on those dispositive motions. If that -- those rulings are incorrect, the Supreme Court will correct it.

But to the extent that this Court -- This Court has jurisdiction to continue with this case and to hear these motions. And this Defendant would urge the Court to--to do so.

DISTRICT COURT OF OKLAHOMA--OFFICIAL TRANSCRIPT-COPY

[T-27]

THE COURT; All right. The Plaintiff has filed an

[t-27, Continued]

Application to Extend Time or what? There, apparently, has been some -- some application.

Ms. Funnell, what have you filed to delay the hearing of these other than those things you've urged?

ROBERTA FUNNELL: Your Honor, at the appropriate times, both fifteen days after each of these people filed their various motions, I requested an extension of time, and then, again, the thirty days that have been set I again had

to file for an Application for Extension of Time. And I have every intention of being able to be available for deposition as soon as I am physically able to handle the papers and to appear.

The motion that they keep referring to has been responded to. All of their Motions for Sanctions have been responded to by affidavit or otherwise. And since I am in the position that I cannot properly plead for you to honor my Motions for Extension of Time, then -- this is getting back to what I indicated earlier -- this is inappropriate

[T-28]

for us to go ahead in any manner.

THE COURT: All right. There, apparently, are Motions for Extension of Time been filed as to each summary motion as has been filed.

MR. SMITH: Your Honor, with regard to the Motion to Dismiss on behalf of Arnold Fagin, that was -- that was responded to, and all we're waiting for is either an oral argument --

THE COURT: All right.

MR. SMITH: -- as necessary of disposition.

THE COURT: All right. I'm -- I'm inclined to entertain that now.

MR. SMITH: That's -- If the Court desires, I'm ready to present my motion.

THE COURT: All right. All right. Let's --

ROBERTA FUNNELL: Your Honor, I'm sorry, I --

[T-28, Continued]

since I can't respond, I'm going to have to leave.

THE COURT: All right. You do as you choose, ma'am.

All right. Present it.

(Thereupon, Roberta Funnell exited the courtroom.)

[T-38]

THE COURT: The Motion for Summary Judgment appears to be well taken, and the Plaintiff has elected not

DISTRICT COURT OF OKLAHOMA--OFFICIAL TRANSCRIPT-COPY

[T-39]

to urge her Motion for Extension to Respond to Defendants' Motions, and accordingly the Motion for Summary Judgment is granted and sustained.

MS. DABNEY: Thank you, Your Honor.

THE COURT: All right.

* * *

MR. HUDSON: I just -- I think the Court needs make some sort of a ruling on her Motion for Extension of Time that she refused to urge and -- and -- so that when we do prepare a journal entry, it will show that something happened to it.

THE COURT: Well, you can show that she -- that it was not presented, that she didn't present it, and --

MR. HUDSON: And, therefore --

THE COURT: -- was denied.

MR. HUDSON: -- denied?

Okay.

* * *

(End of requested proceedings.)

DISTRICT COURT OF OKLAHOMA--OFFICIAL TRANSCRIPT-COPY

[T-40]

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

ROBERTA ANN FUNNELL,)
Plaintiff,)

vs.) No. CJ-87-5512

JAMES D. FUNNELL, et al.,)

Defendants)

REPORTER'S CERTIFICATE

I, Nancy A. Butterfield, Certified Shorthand Reporter, within and for the State of Oklahoma, do hereby certify that the above and foregoing Transcript of Proceedings was taken by me in machine shorthand and thereafter reduced to typewriting by me or under my direction, and that the same was taken on the 4th day of August, 1988, in Courtroom No. 520, Oklahoma County Courthouse, Oklahoma City, Oklahoma. I further certify that this is a true and correct and complete transcript of all proceedings had in the above and foregoing transcript. I further certify that I am not attorney for nor relative of any of said parties or otherwise interested in the action.

WITNESS MY HAND this 2nd day of March, 1990.

(Nancy A. Butterfield)

NANCY A BUTTERFIELD, CSR, CP, CM

DISTRICT COURT OF OKLAHOMA--OFFICIAL TRANSCRIPT-COPY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court January 26, 1989.

ROBERTA ANN FUNNELL,)

Plaintiff,)

vs.) CJ-87-5512

JAMES D. FUNNELL, ET AL.,)

Defendants.)

JOURNAL ENTRY

On the 19th day of April, 1988, a Status Conference was held on the above captioned and styled cause before the Honorable Glenn Dale Carter, assigned Judge of the District Court. The Plaintiff, Roberta Ann Funnell, was excused from attending the conference by the Court. No appearance was made on behalf of Defendant Jonathan W. Burch. Defendants James D. Funnell and Harriet Hunt Funnell appeared through their counsel of record, Ronald R. Hudson and Charles F. Alden, III. Defendant Arnold D. Fagin appeared through his attorney of record, Robert C. Smith, Jr. Defendant Stephen Jones appeared through his attorney of record, David G. Mordy. Defendant Robert Martin appeared through his attorney of record, Kathy Dabney. Defendants Ronald Hudson, Charles F. Alden, III, and Holloway, Dobson, Hudson, & Bachman, P.C., appeared through their counsel of record, B.J. Cooper and William C. Devinney.

The Court heard presentation by counsel regarding the current status of this case.

The Court set the following deadlines:

1. All parties have forty five (45) days from this date, or until June 3, 1988, to file dispositive motions.
2. Responses to dispositive motions must be filed within thirty (30) days from the date of receipt of any motion, and in no event, later than July 3, 1988.
3. The Court will hear oral arguments, on all dispositive motions filed, on the 4th day of August, 1988, at 1:00 p.m., in Courtroom 520 of the Oklahoma County Courthouse.
4. The Motion Dismiss filed on behalf of Defendant Arnold D. Fagin will be decided by the Court on the briefs submitted by the parties, unless the Court notifies the parties that oral arguments are necessary to resolve the issues raised by said Motion.
5. After the Court rules on pending dispositive motions, a Status Conference will be held at which a final Scheduling Order will be entered.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the parties have forty five (45) days from the date of this Conference, or until June 3, 1988, to file dispositive motions.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that responses to dispositive motions must be filed within thirty (30) days

from receipt of said motion, and in any event, no later than July 3, 1988.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that a hearing will be held on all dispositive motions filed by the parties on August 4, 1988 at 1:00 p.m., in Courtroom 520 of the Oklahoma County Courthouse.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Motion to Dismiss of Defendant Arnold D. Fagin will be decided on the brief submitted by the parties, unless the Court orders the parties to present oral arguments.

(Glenn Dale Carter)
GLENN DALE CARTER - JUDGE OF THE DISTRICT COURT

Copy certified by District Court Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Order of Assignment
to Judicial Service

Acting under the authority vested in me by Article VII, Sections 6 and 8 (i), Oklahoma Constitution, and Rule 9(f) of the Rules of Court Administration, I hereby assign

Honorable Glenn Dale Carter
District Judge

to judicial service to be performed in the District Court, Oklahoma County, to hear and decide Cause Number CJ-87-512, Funnell v. Funnell, et al.

This assignment, to become effective this date, shall extend until final disposition in this case.

DATED 9 December 1987

(John B. Doolin)
Chief Justice

Information from Mail Envelope:

Postmarked: April 5, 1988

FROM:
Supreme Court of Oklahoma
Administrative Office of the Courts
1915 N. Stiles, Suite 305
Oklahoma City, Oklahoma 73105 To:
ANN FUNNELL
2306 S.E. 49TH, #124
OKLAHOMA CITY OK 73129

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT, STATE OF OKLAHOMA
OKLAHOMA AND CANADIAN COUNTIES
OKLAHOMA CITY, OKLAHOMA 73102

William R.Saied
District Judge

March 18, 1988

CJ-87-5512
ROBERTA ANN FUNNELL vs JAMES D. FUNNELL, ET AL

TO WHOM IT MAY CONCERN:

This is to you that the above mentioned case is set for a Status Conference before Judge Glenn Dale Carter, on Tuesday, April 19, 1988, at 9:00 a.m., in courtroom 520 at the Oklahoma County Courthouse.

(William R. Saied)
WILLIAM R. SAIED
PRESIDING JUDGE
SEVENTH JUDICIAL DISTRICT

cc: Judge Glenn Dale Carter
Roberta Ann Funnell
B. J. Cooper
Kathy Dabney
Georgiana Peterson
Robert C. Smith,Jr.
Earl D. Mills
Reggie Whitten
Tom L. King
Edward Ray

IN THE DISTRICT COURT IN OKLAHOMA COUNTY,
STATE OF OKLAHOMA

Filed in the District Court November 6, 1987.

(FUNNELL) (pro se)
Plaintiff Attorneys

vs.)(CJ-87-5512)

(FUNNELL))(Kathy Dabney et al.)
Defendants Attorneys

TRANSFER ORDER

For good cause shown, the above styled and numbered cause is hereby **TRANSFERRED** TO THE CHIEF JUDGE

Court recuses-named defendant is Bob Martin, Court Administrator)

(Bryan C. Dixon)
TRIAL JUDGE

Said cause is hereby transferred to (R. Freeman) Division and to Judge (Joe Cannon) (By Joe Cannon, Presiding Judge)

(Leamon Freeman)
CHIEF JUDGE

Dated this (6) day of (November) 19(87)

(Material in parenthesis was handwritten).

Copy certified by District Court Clerk.

IN THE DISTRICT COURT IN OKLAHOMA COUNTY,
STATE OF OKLAHOMA

Filed in the District Court October 16, 1987.

(ROBERTA FUNNELL)	)	(pro se)
Plaintiff	)	Attorneys
	)	
vs.	)	Case No. (CJ-87-5512)
	)	
(JAMES FUNNELL)	)	
Defendants		Attorneys

TRANSFER ORDER

For good cause shown, the above styled and numbered cause is hereby TRANSFERRED TO THE CHIEF JUDGE

(All judges of 7th Jud. District disqualified in all of Pl's cases)

(William R. Saied)
TRIAL JUDGE

Said cause is hereby transferred to (CJ) Division and to Judge (Dixon)

(Joe Cannon)
Chief Judge (Presiding
Judge 7th Jud. Dist.)

Dated this (16) day of (October) 1987

(Material in parenthesis was handwritten).

Copy certified by District Court Clerk.

IN THE SUPREME COURT, STATE OF OKLAHOMA

Filed November 5, 1979.

THE CLERK IS DIRECTED TO ISSUE FOLLOWING ORDERS:

54,217 Donald Funnell and Roberta Ann Funnell v. The Hon. Merle Lansden, Judge for the District Court of Oklahoma County, State of Oklahoma. Rehearing denied.

(Ben T. Williams)
Acting Chief Justice

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed October 19, 1979.

DONALD FUNNELL and ROBERTA ANN FUNNELL, Petitioners.	)	
vs.	)	No. 54,217
THE HONORABLE MERLE LANSDEN, Judge for the District Court, Oklahoma County, State of Oklahoma, Respondents.	)	

ORDER

The order of this Court issued October 10, 1979, is hereby corrected to show the proper citation of authority as follows: Andrews, Mosburg, Davis, Elam, Legg & Bixler, Inc., v. General Insurance Company of America, W.D. Okl., 418 Supp. 304 (1976).

Petitioners are granted until October 26, 1979, within which to file a brief in support o the Petition for Rehearing filed herein.

DONE BY ORDER OF THE SUPREME COURT this 19th day of October, 1979.

(Pat Irwin)
Acting Chief Justice

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court October 10, 1979.

DONALD FUNNELL and ROBERTA ANN FUNNELL, Petitioners,	)	
vs.	)	No.54,217
THE HONORABLE MERLE LANSDEN, Judge for the District Court, Oklahoma County,	)	

State of Oklahoma,)
Respondent.)

ORDER

Jurisdiction assumed and writ of mandamus denied upon reading and consideration of the petition and return, along with brief, affidavits and transcripts in support thereof. ***Andrews, Mosburg, Davis, Elam, Legg & Bixler, Inc.*** v. ***General Insurance Company of America, U.S. W. D.*** Okl. 148 F. Supp. 304 (1976).

DONE BY ORDER OF THE SUPREME COURT THIS 10TH DAY OF OCTOBER, 1979.

(Robert E. Lavender)
Chief Justice

Dissent: Simms, J., Opala, J., Hodges, J.
All others concurring.

OKLAHOMA CONSTITUTION, BILL OF RIGHTS

Art. 2 §6. **Courts of justice open - Remedies for wrongs - Sale, denial or delay**

The courts of justice of the Sate shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay or prejudice.

Art. 2 § 7. **Due Process of law**

No person shall be deprived of life, liberty, or property, without due process of law.

OKLAHOMA STATUTES

12 O.S. § 29 CLERKS TO FILE AND PRESERVE PAPERS

It is the duty of the clerk of each of the courts to file together and carefully preserve in his office, all papers delivered to him for that purpose in every action or special proceeding.

12 O.S. § 31.1 REMOVAL OF RECORDS OR FILES FROM OFFICE OF COURT CLERK

Only officers of the court or persons, firms or corporations holding a certificate of authority pursuant to the Oklahoma Abstractors Law. . . and other authorized court personnel may remove records or case files from the office of the court clerk for a period not to exceed twenty-four (24) hours. Rules for the removal of records or case files shall be promulgated by the district court having jurisdiction over the county in which such records or files are situated.
Laws 1986, c.214,§1, eff. Nov. 1, 1986.

12 O.S. § 2006 TIME

A. COMPUTATION. In computing any period of time prescribed or allowed by this title, by the rules of any court, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included . . .When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays as defined by the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until 4:00 p.m., shall be excluded in the computation.

20 O.S. § 126.

A. . . .The duties of a trial court administrator shall be to assist the presiding judge of the judicial administrative district in the performance of his administrative duties.

B. A trial court administrator shall be selected by the presiding judge of the judicial administrative district in which he is to be employed, subject to confirmation by a majority of the district and associate district judges in the judicial administrative district. A trial court administrator shall serve at the pleasure of a majority of the district and associate district judges in the judicial administrative district . . .

20 O.S. § 1401. Disqualification of trial judge

A. No judge of any court shall sit in any cause or proceeding in which he may be interested, or in the result of which he may be interested, or when he is related to any party to said cause within the fourth degree of consanguinity or affinity, or in which has been of counsel for either side, or in which is called in question the validity of any judgment or proceeding in which he was of counsel or interested, or the validity of any instrument or paper prepared or signed by him as counsel or attorney, without the consent of the parties to said action entered of record.

B. No judge of any court shall sit in any contested civil cause or proceeding if he is related to any attorney of record in such cause within the third degree of consanguinity or affinity without the consent of the parties in such cause or proceeding who have entered a formal appearance of record.

This disqualification shall not apply when a appearance is made by a party for the purpose of disclaiming any interest in such action or proceeding or waiving his right to appear and contest such cause or proceeding.

C. No judge of any court shall sit in the trial or hearing of any criminal cause or proceeding if he is related to any attorney of record in such cause within the third degree of consanguinity or affinity without the consent of the parties who have made an appearance in such cause or proceeding entered of record. This disqualification shall not apply to arraignments, the fixing of bail, or the acceptance of pleas.

D. "Attorney of record" as used in this section shall include not only the attorney actually appearing in such action but any other attorney who is an associate or a member of a partnership or professional corporation with such appearing attorney. However, "attorney of record" as the term relates to district attorney offices and public defender offices shall mean only that attorney actually appearing in the cause or proceeding.

E. The disqualifications provided for in this section shall exclude the disqualifications at common law.

R.L. 1910, § 5812; Laws 1970, c.295, §1, eff. Jan. 1, 1971; Laws 1984, c. 184, §1, eff. May 14, 1984.

Renumbered from 22 O.S. 1961, § 571, under authority of Laws 1969, c. 119, § 1.

20 OS § 1402. Disqualification of appellate judges

No Justice of the Supreme Court of this state or Judge of the Criminal Court of Appeals shall participate in the decision of any cause in such Court appealed thereto from a lower court of said state, in which court such Justice or Judge was judge presiding at the trial of such cause; and the same qualifications shall apply to the members of the Supreme Court and the Criminal Court of Appeals, as to other courts of record, and whenever any member of either of said Courts is disqualified the same shall be entered of record in such Court and such disqualifications of such member shall forthwith be certified by the Clerk of such Court to the Governor of the state, who shall appoint some member of the Bar of the state, possessing the same qualifications as the members of such Court, to sit as special Judge in said cause.
R.L. 1910, §5815.

Renumbered from 22 O.S. 1961, §574, under authority of Laws 1969, c. 119, § 1.

20 O.S. § 1403. Disqualification of judge, claim of – Mandamus

Any party to any cause pending in a court of record may in term time or in vacation file a written application with the clerk of the court, setting forth the grounds or facts upon which the claim is made that the judge is disqualified, and request said judge so to certify, after reasonable notice to the other side, same to be presented to such judge, and upon his failure so to do within three (3) days before said cause is set for trial, application may be made to the proper tribunal for mandamus requiring him so to do.

Renumbered from 22 O.S. 1961, § 574, under authority of Laws 1969, c. 119, § 1.

LOCAL COURT RULES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Rule 6(E) (2) With respect to other claimed cost items, a full itemized bill of costs supported by invoices or other evidence in the form provided by the Clerk.

An application for costs, attorney's fees, or both submitted pursuant to this Rule shall be filed with the Clerk not more than

fifteen (15) days after the judgment is rendered (by notification or announcement of a decision) or, in the alternative, not more than ten (10) days after the formal entry of a written judgment, whichever is later.

OKLAHOMA RULES ON ADMINISTRATION OF COURTS

RULE 9. DISQUALIFICATION OF JUDGE-ASSIGNMENT OF SUCCESSOR-TRANSFER OF CAUSES

(a) When a judge of the Court of Appeals shall disqualify or be ordered disqualified from deciding a cause, the Chief Justice, when requested so to do by a presiding judge of the division of that court, shall assign to the division another judicial officer of the state. Art. 7, § 6 and § 8(i) Okl. Const. and 20 O.S.1971, § 30.3.

(b) When a Justice of the Supreme Court or a Judge of the Court of Criminal Appeals shall disqualify from participating in a case; or a vacancy shall otherwise occur for any reason, the Chief Justice, when requested so to do by the affected Court, shall assign a judicial officer of the state to act as a Justice or Judge in that case. Art. 7, Sec. 6 and Sec. 8(l), Okl. Const.

(c) If the Chief Justice shall disqualify from participating in a case, the Vice Chief Justice, if not disqualified himself, shall make the assignment prescribed by subdiv. (b) hereof. If both the Chief Justice and Vice Chief Justice should disqualify, then the justice with highest seniority in terms of service, who is not disqualified, shall make the assignment. If all the justices should disqualify in a case then the Chief Justice shall request that the Governor appoint qualified members of the bar to sit in the case as special justices, all as provided in 20 O.S.1971 § 1402.

(d) There shall be no communication about the case between a disqualified appellate judge or justice and the judicial officer assigned to succeed him in the case.

(e) No judicial officer of the district court who

I. is requested to disqualify,
II. has disqualified himself, or

III. has been ordered disqualified

in a case shall participate in the selection of another judicial officer for assignment to that case. Any communication pertaining to the case between the disqualified judicial officer and one who has been assigned to it shall be limited to ascertaining the identity of counsel in the case and the time estimated for its trial. Where no disqualification is sought or granted, paragraph (e) of this rule shall not operate to restrict an administrative judge (chief or presiding judge) in assigning or re-assigning cases, in regular order, either on his own initiative or at the request of a subordinate judicial officer.

(f) When a chief judge of the district court is disqualified in a case, within the meaning of subdiv. (e), the presiding judge of the judicial administrative district shall select another judicial officer for assignment to that case. When a presiding judge is disqualified in a case, within the meaning of subdiv. (e), the Chief Justice shall select another judicial officer for assignment to that case.

(g) Neither the Chief Justice nor the Administrative Director of the Courts shall participate in the process of selecting a judicial officer for assignment to a case in any court if either by statute or case law he would be disqualified from sitting in that case as a judge. If the Chief Justice should disqualify from making an assignment to a case, the Vice Chief Justice, if not disqualified, shall make the assignment. If both the Chief Justice and the Vice Chief Justice should disqualify from making the assignment, then the justice with highest seniority in terms of service, who is not disqualified, shall make the assignment.

RULES FOR DISTRICT COURTS OF OKLAHOMA

RULE 15. DISQUALIFICATION OF JUDGES IN CIVIL AND CRIMINAL CASES

a. Before filing any motion to disqualify a judge, an ***in camera*** request shall first be made to the judge to disqualify or to transfer the cause to another judge. If such request is not satisfactorily resolved, not less than ten (10) days before the case is set for trial a motion to disqualify a judge or to transfer a cause to another judge may be filed and a copy delivered to the judge.

b. Any interested party who deems himself aggrieved by the refusal of a judge to grant a motion to disqualify or transfer a cause to another judge may re-present his motion to the Chief Judge of the county in which the cause is pending or, if the disqualification of a Chief Judge is sought, to the Presiding Judge of the administrative district by filing in the case within five (5) days from the date of said refusal a written request for re-hearing. A copy of the request shall be mailed or delivered to the Chief Judge or presiding Judge, to the adverse party and to the judge who entered the original order. If the hearing before the second judge results in an order adverse to the movant, he shall be granted not more than five (5) days to institute a proceeding in the Supreme Court or the Court of Criminal Appeals for a writ of mandamus. Neither the Supreme Court nor the Court of Criminal Appeals will entertain an original proceeding to disqualify a judge or to direct a judge to transfer a cause to another judge unless it is shown that the relief sought was previously denied by the judge to whom the matter was re-presented in accordance with this rule. An order favorable to the moving party may not be reviewed by appeal or other method.

c. An original proceeding in mandamus to disqualify a judge in a civil action or proceeding shall be brought in the Supreme Court; an original proceeding in mandamus to disqualify a judge in a criminal case or proceeding shall be brought in the Court of Criminal Appeals. If mandamus is not brought in appellate court designated as proper by this rule, the case will be transferred to the proper court either on motion or ***sua sponte***. Art. VII, § 4 Okla. Const.

DISTRICT COURT RULES FOR OKLAHOMA-CANADIAN COUNTIES

SEVENTH JUDICIAL DISTRICT

RULE NO. 52

COURT FILES: The following persons may remove records or court files from the office of the Court Clerk for a period not exceed twenty-four (24) hours; the court clerk or his deputies,

bailiffs, judges, attorneys, court reporters, court administrator, and the court administrator's secretary.

All persons authorized to remove court files from the court clerk's office shall not remove them from the courthouse. All persons authorized to remove court files from the clerk's office shall complete an out card provided by the court clerk showing the court file number, date, and name of the authorized person checking out file, together with address, phone number, and bar number. Said out card is deemed to be a written receipt.

The twenty-four hour rule will not apply when a court file is being used by a judge, or by written order of the Presiding Judge of the division or a District Judge.